

UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

IN RE: CITY OF DETROIT, . Docket No. 13-53846  
MICHIGAN, .  
 . Detroit, Michigan  
 . October 15, 2014  
Debtor. . 8:30 a.m.  
 . . . . .

TRIAL RE. OBJECTIONS TO CHAPTER 9 PLAN  
BEFORE THE HONORABLE STEVEN W. RHODES  
UNITED STATES BANKRUPTCY COURT JUDGE

APPEARANCES:

For the Debtor:

Jones Day  
By: GREGORY M. SHUMAKER  
MIGUEL EATON  
51 Louisiana Avenue, N.W.  
Washington, DC 20001  
(202) 879-3939

Jones Day  
By: HEATHER LENNOX  
222 East 41st Street  
New York, NY 10017  
(212) 326-3837

Pepper Hamilton, LLP  
By: ROBERT S. HERTZBERG  
4000 Town Center, Suite 1800  
Southfield, MI 48075-1505  
(248) 359-7333

For the Official  
Committee of  
Retirees:

Dentons US, LLP  
By: CLAUDE D. MONTGOMERY  
1221 Avenue of the Americas, 25th Floor  
New York, NY 10020-1089  
(212) 632-8390

For Ad Hoc COPs  
Holders:

Kramer Levin Naftalis & Frankel, LLP  
By: JONATHAN M. WAGNER  
1177 Avenue of the Americas  
New York, NY 10036  
(212) 715-9393

## APPEARANCES (continuing):

For County of           Dechert, LLP  
Macomb, Michigan:   By: DEBRA D. O'GORMAN  
                          1095 Avenue of the Americas  
                          New York, NY 10036  
                          (212) 698-3593

Court Recorder:       Letrice Calloway  
                          United States Bankruptcy Court  
                          211 West Fort Street, 21st Floor  
                          Detroit, MI 48226-3211  
                          (313) 234-0068

Transcribed By:       Lois Garrett  
                          1290 West Barnes Road  
                          Leslie, MI 49251  
                          (517) 676-5092

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1 THE CLERK: All rise. Court is in session. Please  
2 be seated. Case Number 13-53846, City of Detroit, Michigan.

3 MR. MONTGOMERY: Your Honor, the city gave me  
4 permission to do an administrative matter first if that's  
5 okay with you.

6 THE COURT: Sure. Go ahead.

7 MR. MONTGOMERY: Your Honor, yesterday during the  
8 examination of Mr. Fornia, the Retiree Committee asked the  
9 Court and the Court admitted Exhibit 10995, which was ASOP  
10 27. That number, however, had been previously used in the  
11 testimony of Ms. Nicholl. It was an admitted exhibit, so we  
12 have asked the other side to consent to the replacement to  
13 10484, which is ASOP 27. If I may approach the bench, your  
14 Honor --

15 THE COURT: Sure. Sir.

16 MR. MONTGOMERY: And with the consent of the city  
17 and the objectors, we would ask the Court to admit 10484.

18 THE COURT: Any objections?

19 MR. WAGNER: No, your Honor. That's fine.

20 MR. SHUMAKER: No objection from the city, your  
21 Honor.

22 THE COURT: It is admitted.

23 (Retiree Committee Exhibit 10484 received at 8:31 a.m.)

24 MR. MONTGOMERY: Thank you, your Honor.

25 THE COURT: Anything further of an administrative or

1 housekeeping nature?

2 MR. WAGNER: Just, your Honor, as I mentioned, I  
3 won't be here the next two days because of the holiday, but  
4 Ms. Fish will be ably representing the COPs.

5 THE COURT: Okay.

6 MR. SHUMAKER: Nothing from the city, your Honor.

7 THE COURT: Okay. Let's begin with our proceedings  
8 for today then. I'd like to first invite Irma Industrious to  
9 examine her witness, Dennis Taubitz. Are they here? Not  
10 yet. Okay.

11 MR. HERTZBERG: Your Honor, Robert Hertzberg on  
12 behalf of the city. I would maybe suggest that we deal  
13 with -- the motion in limine regarding Heather Lennox is out  
14 there. I'd just advise the Court we still have that on the  
15 docket.

16 THE COURT: Well, let's see. Is Wanda Hill here?  
17 You are here, ma'am? Okay. Can you step forward, please?  
18 Yeah. You can just stand right there at the lectern for me.  
19 Thank you. And what is your name?

20 MS. HILL: Wanda Jan Hill.

21 THE COURT: Okay. Do you still wish to call as a  
22 witness Ms. Lennox from Jones Day?

23 MS. HILL: Well, I did get a document that said I  
24 couldn't use her as a witness, so --

25 THE COURT: Well, the motion has requested that I

1 not allow it, but I have not made a ruling on that yet, so  
2 that's why I was asking if you still want to ask her  
3 questions.

4 MS. HILL: Yes.

5 THE COURT: You do?

6 MS. HILL: Um-hmm.

7 THE COURT: Okay. So let me hear from the attorney  
8 for the city on this question, and then I'll hear from you,  
9 and then I'll make a decision about whether you can ask  
10 questions of Ms. Lennox. Okay?

11 MS. HILL: Okay.

12 THE COURT: If you'll just step two steps to one  
13 side or the other, I can let Mr. Hertzberg use that  
14 microphone.

15 MR. HERTZBERG: Thank you.

16 THE COURT: Go ahead, sir.

17 MR. HERTZBERG: Good morning, your Honor. Robert  
18 Hertzberg, Pepper Hamilton, on behalf of the City of Detroit.  
19 Ms. Lennox is, as the Court knows, one of the lead attorneys  
20 in representation of the City of Detroit in the restructuring  
21 case before this Court. She has been actively involved in  
22 the crafting of the plan of adjustment and has been actively  
23 involved in the trial of the confirmation of this plan, so  
24 she's been involved in every aspect of the case. If  
25 Ms. Lennox testified before the Court, there would be issues

1 on almost any question dealing with attorney-client privilege  
2 and would also deal with the mediation order that's in place  
3 regarding negotiations with retirees. The Court has  
4 authorized Ms. Hill under its order to examine Ms. Lennox on  
5 two issues, whether the 6.75-percent interest rate is  
6 excessive on the ASF and whether the rate was adequately  
7 disclosed in the disclosure statement. That's what's set  
8 forth in your order. These are clearly, in my mind, legal  
9 issues that would have to be addressed by the Court and not  
10 factual issues that Ms. Lennox can give any insight on. The  
11 case law on calling opposing counsel as a witness, one of  
12 them is the U.S. versus Ziesman case out of the Eighth  
13 Circuit that clearly says that there must be a compelling  
14 need -- that's the language they use, compelling need -- in  
15 order to call opposing counsel as a witness. More telling  
16 even is the Nationwide versus -- Nationwide Insurance versus  
17 Home Insurance case out of the Sixth Circuit, which is cited  
18 in our motion in limine. That case dealt with an affirmation  
19 of an arbitration decision, and Home Insurance asked the  
20 Sixth Circuit to reverse the confirmation of the decision.  
21 Home Insurance wanted to take the discovery of the Nationwide  
22 attorney by a deposition to show bias of one of the  
23 arbitrators, and the Court held, and I quote, "The District  
24 Court also denied Home's motion for discovery from  
25 Nationwide's counsel because Home's failed to make the

1 requisite showing necessary to take the deposition of an  
2 opposing counsel. Discovery from an opposing counsel is,  
3 quote, 'limited to where the party seeking to take the  
4 deposition has shown that (1) no other means exist to obtain  
5 the information and (2) the information sought is relevant  
6 and nonprivileged; and (3) the information is crucial to the  
7 preparation of the case.'"

8           There's been no showing that Ms. Lennox is in any  
9 way the only source of relevant information on these issues.  
10 In regard to the 6.75-percent rate on the ASF recoupment,  
11 there were witnesses that were available to be questioned on  
12 this issue. One is Glenn Bowen, two is Cynthia Thomas, three  
13 is Chuck Moore, and four is Terri Renshaw. As to whether  
14 there was adequate information disclosed on this issue within  
15 the disclosure statement, Kevyn Orr, the emergency manager  
16 who signed the disclosure statement, was on the stand and was  
17 available to address this issue. Ms. Lennox's testimony is  
18 not, one, vital, or, two, probative on this issue. Her  
19 personal opinion as to what the 6.75-percent interest rate  
20 means or what was disclosed in the disclosure statement is  
21 not relevant to the findings on these issues. One, the  
22 documents speak for themselves, and, two, there were other  
23 witnesses who are nonattorneys who could have testified to  
24 this.

25           Under the Lolli versus Zaller case, which we cite,

1 which is also a Sixth Circuit case, they use the language  
2 "extraordinary circumstances" when calling counsel to  
3 testify. I'd suggest to this Court that there are no  
4 extraordinary circumstances here, and I'd ask that the Court  
5 reverse its order requiring Ms. Lennox to testify. Thank  
6 you, your Honor.

7 MS. HILL: I object to everything that he's -- that  
8 he just spoke about because in his statement he did mention  
9 that she was a part of all of this documentation that has  
10 gone out over the last five, six months. I think that she is  
11 qualified to be a witness for that 6.75 percent. Her name is  
12 on a lot of documents. She even stood before you the 15th  
13 and the 21st of July to talk about that, so those other names  
14 that he's mentioned, I'm not aware of them. I just know that  
15 Ms. Lennox was the best choice to address those concerns. I  
16 think she's well-qualified.

17 THE COURT: Mr. Orr, may I have your attention,  
18 please?

19 MR. ORR: Your Honor, you always have my attention.  
20 Yes, sir.

21 THE COURT: Thank you. To what extent can you  
22 testify about whether the disclosure statement discloses the  
23 6.75-percent interest on the ASF recoupment payments?

24 MR. ORR: Might I have a minute to consult with my  
25 attorneys?



1 THE COURT: Yeah. See, that tells me the answer is  
2 no.

3 MS. HILL: Can I pose a question?

4 THE COURT: One second. Sir.

5 MR. HERTZBERG: Your Honor, Mr. Orr can testify to  
6 his knowledge of the 6.75-percent interest rate issue. I  
7 don't know if there's -- and I'd indicate to the Court that  
8 it is not addressed, specifically the number, in the  
9 disclosure statement, but he can testify that there's other  
10 documents that are in there.

11 THE COURT: Well, all right. Mr. Hertzberg, since  
12 you have suggested that Mr. Orr can testify about this, I'm  
13 going to test that, and if he can, so be it, but if he can't,  
14 we're going to have to seriously consider asking Ms. Lennox  
15 about this. Mr. Orr, step forward, please. And just so that  
16 there's no misunderstanding about it, we'll administer the  
17 oath again.

18 KEVYN ORR, WITNESS, SWORN

19 THE COURT: All right. Please sit down. So, Ms.  
20 Hill, let me invite you to ask the questions of Mr. Orr that  
21 you were going to ask of Ms. Lennox, and if he can answer  
22 them, then your goal and purpose here will have been  
23 satisfied. If he can't answer them, then I likely will have  
24 Ms. Lennox testify.

25 MS. HILL: Okay. Because I wasn't prepared for that

1 witness and Ms. Lennox because I assumed that they were  
2 off --

3 THE COURT: Um-hmm. Okay.

4 MS. HILL: -- you know, under the radar, I'll  
5 attempt to throw -- or provide some questioning for Mr. Orr.

6 DIRECT EXAMINATION

7 BY MS. HILL:

8 Q Mr. Orr, my motion was relative to the nondisclosure of  
9 the 6.75 percent, and I don't know how much of the workings  
10 you were involved with that information not being disclosed,  
11 but can you explain to me and to the Court how much  
12 involvement did you have with the 6.75-percent interest not  
13 being provided in the relevant documents that the Class 11 in  
14 particular needed in order to make a sound decision?

15 THE COURT: Excuse me. Before you answer that  
16 question, the 6.75-percent interest rate that you're talking  
17 about is the 6.75-percent interest on the ASF recoupment --

18 MS. HILL: Yes.

19 THE COURT: -- amounts?

20 MS. HILL: On the -- and I have to say clawback  
21 because I am not knowledgeable whether or not they have --

22 THE COURT: That's fine.

23 MS. HILL: -- fixed that.

24 THE COURT: That's fine. And we know what you are  
25 referring to when you use the word --

1 MS. HILL: Okay.

2 THE COURT: -- "clawback." Go ahead, sir.

3 THE WITNESS: Thank you, your Honor. Good morning,  
4 ma'am.

5 BY MS. HILL:

6 Q Good morning.

7 A I was involved in that process.

8 Q To what extent relative to it being a nondisclosure  
9 issue?

10 A I don't want to mislead you. I don't look at it as a  
11 nondisclosure issue. Without getting into the discussions  
12 that occurred between counsel, between the Retiree Committee,  
13 and between the mediation process as far as getting to that  
14 number, I think what I can say is that there was no  
15 affirmative decision made necessarily not to include it in  
16 the disclosure statement. The concept generally was that  
17 there was going to be communication with the Retiree  
18 Committee, which we asked this Court to impanel, and so that  
19 there'd be a conduit of information going back and forth to  
20 retirees. My understanding is that that information was  
21 provided, I believe, specifically in at least one slide deck  
22 that that committee put out to retirees. There were a number  
23 of other fliers and communications that went out prior to the  
24 deadline for voting. I don't have all of them in front of  
25 me, but I'd be happy to go back and get them. In addition, I

1 understand that there were specifically discussions with  
2 members of the committee as well as members of other groups  
3 to try to explain that process, so I don't think there was an  
4 intent necessarily not to include it in the disclosure  
5 statement. I do believe that there was every intent to make  
6 sure that it was disclosed in a number of different forms.

7 Q I beg to differ. In my research I found that the  
8 words -- or the word phrase "other factors" was used --

9 A Um-hmm.

10 Q -- instead of being forthright and just putting all the  
11 cards on the table, so, therefore, that gave me the  
12 impression that it's something that you don't want us to  
13 know, so when "other factors" was used in at least ten  
14 different documents, it raised a red flag. As a matter of  
15 fact, I do have a chart, and I did talk with the court  
16 administrator, and I did ask her for the capability of  
17 displaying my information, my chronology table, which backs  
18 the fact that it was not disclosed. It was under the guise  
19 of "other factors." My report does show --

20 THE COURT: Do you want us -- do you want us to help  
21 you display that --

22 MS. HILL: Yes.

23 THE COURT: -- at this time?

24 MS. HILL: Right.

25 THE COURT: Okay. Chris, can you do that for us?

1 There you go. Just slide it over because we can't quite see  
2 the whole date.

3 MS. HILL: Okay.

4 THE COURT: There we go.

5 MS. HILL: And if you slide it down, I can do it.  
6 The top line, yeah. Okay. Okay. I want the Court and the  
7 Judge to bear with me. This is something new --

8 THE COURT: Yes.

9 MS. HILL: -- but I do want to say thank you for  
10 this opportunity because no one can take care of my business  
11 better than I can, so I want to thank you for that.

12 BY MS. HILL:

13 Q This table was pulled together because that 6.75-percent  
14 interest was a very important number, that along with other  
15 things that are totally unclear because they lack some  
16 communication between the retirees and the City of Detroit  
17 and all the other entities involved. This report shows the  
18 research that I did relative to life expectancy, and I'm  
19 going to put it together as life expectancy and other factors  
20 because every time it was mentioned in a document, this was  
21 the phrase that was used. As you see, the filing for  
22 February 21st with the first plan of adjustment, nothing was  
23 listed there, and I can somewhat understand that because you  
24 didn't have it together at that time, but as the time went by  
25 and documents after documents after documents were presented,

1 never was the "other factors" explained nor was it listed as  
2 part of an official record. Starting from February 21st all  
3 the way down to the first time that it was mentioned, the  
4 life expectancy and other factors, it came about in -- April  
5 10th, as you all can see, but there, too, it came out as  
6 "other factors." April the 16th it also came like that, but  
7 that was an opportune time for this "other factors" to be  
8 mentioned, to break down "other factors," and I say that  
9 because when you gave a definition of AFS distribution  
10 recipient and other phrases that fit along that line, that  
11 should have been a part of the distribution information, you  
12 know, spelling it out, the 6.75, and not other factors.  
13 Other factors could be a house, a dog, you know. It could be  
14 a lot of things, but since we're talking about the bankruptcy  
15 and we're talking about money, that other factors should have  
16 been mentioned. And when you have a document as large as  
17 these documents that you all have produced, it was enough  
18 space, enough room to break down other factors, so I had a  
19 real problem with the fact that "other factors" was not  
20 explained.

21 THE COURT: Can you slide that up? Yes. Thank you.  
22 Good.

23 MS. HILL: Okay.

24 BY MS. HILL:

25 Q Once again, April 16th -- I mean April 17th it was not

1 mentioned, and we dealt with the ballots. This is when you  
2 were trying to pull it together, what was going to go on the  
3 ballot and what we needed to have on the ballot. I believe  
4 at this time you had decided or you might have -- and you can  
5 look -- can you see it?

6 A Yes, ma'am, I can see it.

7 Q You can let me know was the information relative to the  
8 clawback or the AFS recoupment and the pension, the four and  
9 a half percent and the fifteen and a half percent, was that  
10 known at that time how you will -- how you're going to  
11 calculate the clawback? Did you know it April 17th?

12 A Ma'am, sitting here right now, I don't recall. I'd have  
13 to look at my notes.

14 Q Okay. I'm assuming that -- I'm going to assume -- and  
15 sometime, you know, those assumptions are not right -- I'm  
16 going to assume that you had some idea about what you were  
17 going to take from the retirees.

18 A There were general discussions that I think are covered  
19 by the mediation order, but I think it's fair to say around  
20 that time there were discussions going back and forth.

21 Q So the money was an issue at that time?

22 A I believe there were discussions that were being had.

23 Q And I think so, too, because the media talked a lot about  
24 how much they were going to take from us. It wasn't at that  
25 point where you had decided it was going to be four and a

1 half percent or twenty-seven and a half percent, but there  
2 was an idea of how much money you needed, so my concern  
3 was -- especially when we got to the POA three, that you knew  
4 at that time that other factors was going to be an issue, and  
5 you had some idea what other factors was going to be. I  
6 don't think you would have included it in a document unless  
7 you had some kind of idea of what other factors was going to  
8 curtail, but --

9 THE COURT: Is there a -- is there a second page to  
10 this document?

11 MS. HILL: Yes, it is, uh-huh. This is the other  
12 part of the chronology.

13 THE COURT: Turn it the other way.

14 MS. HILL: Okay. I'm not used to this --

15 THE COURT: There you go.

16 MS. HILL: -- kind of machine here. Okay.

17 BY MS. HILL:

18 Q As you see, a couple of weeks later another document came  
19 out, and, once again, you referred to -- someone referred to  
20 life expectancy and other factors without explaining what  
21 "other factors" was. Again, that was an opportune time to  
22 break that "other factors" down and provide that information,  
23 and we go all --

24 THE COURT: Let me just -- let me just interrupt  
25 here.



1 THE WITNESS: Um-hmm.

2 THE COURT: Mr. Orr, I think what --

3 MS. HILL: Mrs. Hill.

4 THE COURT: -- Ms. Hill -- yeah -- Ms. Hill is  
5 trying to get to here is whether or not any of the city's  
6 filed documents explicitly disclosed that there was a 6.75-  
7 percent interest rate associated with the ASF recoupment or  
8 clawback.

9 THE WITNESS: Right.

10 THE COURT: Do you know the answer to that question?

11 THE WITNESS: What I recall, your Honor, is that I  
12 don't think it was included in the disclosure statement.  
13 What I do not recall is there were other documents that were  
14 distributed that were also, for instance, included on the  
15 city's website. I do not know -- the fliers that we sent out  
16 to the committee, various communiques that we sent out, the  
17 other information, I do not know if any of those documents  
18 were ever filed as an exhibit to any pleadings filed in this  
19 court by the city. I simply don't know that, so I can't  
20 be --

21 THE COURT: All right. Thank you. Mr. Hertzberg,  
22 in the circumstances, I think we have to have Ms. Lennox  
23 testify about the extent to which she can fill in that which  
24 Mr. Orr doesn't know.

25 MR. HERTZBERG: That's fine, your Honor.

1 THE COURT: All right. Mr. Orr, you're excused.  
2 Thank you.

3 THE WITNESS: Thank you, your Honor.

4 (Witness excused at 8:53 a.m.)

5 THE COURT: Let's bring Ms. Lennox in.

6 MR. HERTZBERG: Your Honor, it might be helpful if I  
7 could suggest to the Court that I ask Ms. Lennox a series of  
8 questions and lay a foundation and then allow Ms. Hill to  
9 examine her so that we can get the documents out at least.

10 THE COURT: I'll let you do that on cross, but we're  
11 going to follow regular trial procedure here, which gives Ms.  
12 Hill the first opportunity to question the witness. All  
13 right. Can you ask Ms. Lennox to come in? Oh, she's here.  
14 Okay. Please raise your right hand.

15 HEATHER LENNOX, WITNESS, SWORN

16 THE COURT: Please sit down.

17 DIRECT EXAMINATION

18 BY MS. HILL:

19 Q Hi, Ms. Lennox.

20 A Good morning, ma'am.

21 Q I guess I want to just make my questions short and brief  
22 to you, and, to coin a phrase, what did you know and when did  
23 you know it relative to the other factors?

24 THE COURT: Well, and specifically the disclosure of  
25 the 6.75-

1 MS. HILL: Right.

2 THE COURT: -- percent interest rate on the ASF  
3 recoupment.

4 MS. HILL: And that's what disclosure mean.

5 BY MS. HILL:

6 Q What did you know and when did you know it?

7 A So let's start with the beginning of the process when we  
8 were putting documents together that would be distributed to  
9 the retiree community with respect to their voting on the  
10 plan, and those documents contained many documents, as you  
11 indicated. There was the plan itself. There was the  
12 disclosure statement. There was a document that we called in  
13 the court a plain language statement, which was a separate  
14 insert that was supposed to try to make very complicated  
15 pension and retiree healthcare concepts and try to put  
16 them -- excuse me -- as much as we could, in plain English  
17 for folks to understand. And there were also ballots, and I  
18 believe there were some letters that were sent to -- sent in  
19 the solicitation package as well. Excuse me, ma'am. I'm  
20 fighting a cold. The purpose of all those -- excuse me. The  
21 purpose of all those disclosure documents, ma'am, was to try  
22 to explain to each of the pension claimants what exactly, to  
23 the extent we could provide it, was going to happen with  
24 respect to their pensions as a result of the plan of  
25 adjustment, and so one of the things that we thought would be

1 most helpful to the pension participants was to disclose to  
2 them -- and we did this in the ballots -- exactly what would  
3 happen to their pension, so, therefore, each retiree -- there  
4 was a line on the ballot that showed the total amount of the  
5 ASF recoupment that each retiree who was subject to it would  
6 be expected to pay. It also showed each -- we also  
7 calculated a monthly amount that would be deducted from the  
8 retiree's check related solely to ASF recoupment, and we also  
9 included the total result as a result of the other reductions  
10 that would come from the plan plus the ASF recoupment. What  
11 was the total effect on each retiree's pension check? Those  
12 calculations were made by the city's financial advisors and  
13 actuaries, and in some cases the Retiree Committee's  
14 actuaries helped. And that information was put on every  
15 ballot that was sent to each retiree, so we thought the best  
16 evidence of what would happen to retirees' pensions was to  
17 give them the exact numbers, which we did on the ballots.

18           With respect to when we said -- the concept of an  
19 annuity we thought was familiar to the retirees, and that is  
20 because it was our understanding -- and I believe there's  
21 been other testimony in this case to this effect -- that when  
22 a retiree -- when an employee goes to retire from the City of  
23 Detroit, the folks that deal with the retirement process  
24 explain to the retirees that they can -- they have two  
25 choices with respect to their annuity savings fund account.

1 They can take it in a lump sum or they can take it in  
2 payments over time, and the pension systems and the pension  
3 folks refer to that as an annuity, a payment over time. And  
4 when they do that, they calculate it, and they use the  
5 interest rate that is the investment return assumption for  
6 the pension plan. So when we calculated the ASF annuitized  
7 amounts, we also used the investment return assumption for  
8 the pension plan going forward, and we believe that was a  
9 familiar concept to the retirees because they had that choice  
10 on retirement.

11 So in addition to that, ma'am, when it was brought  
12 to our attention that some retirees had some question about  
13 that -- I believe counsel to the Retiree Committee brought  
14 that to our attention, and we also had to correct a  
15 disclosure regarding the date for the ASF recoupment period.  
16 We reached a stipulation with the Retiree Committee that  
17 corrected that disclosure about the ASF recoupment period,  
18 and in that stipulation that was filed with the Court on June  
19 4th, we did specifically include that interest percentage  
20 because people had been asking about it. It was also in a  
21 letter dated June 4th that went out to the retirees that were  
22 affected by this change and correction in the ASF recoupment  
23 period. That's a publicly filed document, ma'am.

24 Q Okay. I want to go back to what you said that really  
25 struck a chord. You said that it was exact. It was not

1 exact. Nowhere in those documents did it tell you that there  
2 was a 6.75-percent interest tacked onto the AFS recoupment  
3 amount, so it was not exact, and that's one of the reason why  
4 I'm standing here. It was not exact. The assumptions -- we  
5 have to stop dealing with the assumptions because we can't  
6 really say that retirees understand the workings and the  
7 makings of their pension checks. They know that they -- for  
8 30 years they set aside spendable cash and set it aside,  
9 which kept them from spending it, so that they'd be in a  
10 position where they can live in comfort, as most Americans  
11 want to do. That plain language document, in my view, was  
12 the ideal document for you to spell everything out, the 6.75.  
13 The "other factors" should have just been -- should have just  
14 fallen by the wayside, and since it was a plain language  
15 document, it should be plainly explained to us what were the  
16 calculations for the clawback. I think that has a lot of the  
17 retirees, including myself, all up in arms because there's  
18 information where you're taking money away from us, but  
19 you're not giving us the right to know what this -- you know,  
20 what is all the money going for and what is -- you know, why  
21 were you taking the money, and what was the calculation and  
22 the reason for it? I still say that that "other factors" was  
23 used as a ruse to allow you to come back at some other time  
24 to say, "Oh, that was easy. We got that money from them, and  
25 let's try to get it from them under 'other factors.'"

1 A No, ma'am, there was no intent for that.

2 Q Well, going to my research and seeing how long it took  
3 you all to give us that information, in fact, that  
4 information was not disclosed to us until we had that hearing  
5 with some objectors July 15th, and there was a follow-up the  
6 21st. And ironically the 6.75 showed up after we exposed the  
7 fact that we were being charged 6.75. That's not a  
8 coincidence at all. That was deliberate way of you easing  
9 that in after it had not been there. But let me just ask you  
10 this. When you said "other factors," what factors were you  
11 thinking about? And please don't say gender because gender  
12 is a part of the life expectancy. That statement -- that  
13 word shouldn't even stand alone. It's a part of the life  
14 expectancy, so that's -- to me that's not another -- that's  
15 an other factor. So what were those things that you thought  
16 about that you felt should be used as other factors?

17 A Ma'am, how you calculate an annuity payment is an  
18 actuarial calculation.

19 Q I understand that, and I have to --

20 THE COURT: Ma'am, you have to let the witness  
21 finish her answer to your question.

22 MS. HILL: Okay, because --

23 THE COURT: You can't --

24 MS. HILL: -- she's going to repeat what she just  
25 said.

1 THE COURT: Okay. But you can't argue. You can  
2 just ask questions.

3 MS. HILL: Okay.

4 THE COURT: Okay. So go ahead and finish your  
5 answer.

6 MS. HILL: Um-hmm.

7 THE WITNESS: So, ma'am, I am not an actuary. I  
8 cannot myself perform the calculations. I don't know what  
9 goes into the calculations other than generally knowing that  
10 longevity and an interest factor -- and I think there are  
11 other factors that go into that calculation, but we asked our  
12 actuaries to perform that calculation, and how they do that I  
13 do not know.

14 BY MS. HILL:

15 Q So who came up with the word phrase "other factors"?  
16 Who's responsible for that?

17 A Well, the disclosure that was included in all of the  
18 documents that you received --

19 Q Um-hmm.

20 A -- was drafted initially by the city, but it was heavily,  
21 heavily reviewed and edited by many, many people who  
22 represent the retirees such as the Retirement Systems  
23 counsel, the Retiree Committee counsel. We had counsel for  
24 the two largest retiree associations in the city that  
25 reviewed and commented on that. We also had counsel for the



1 four safety unions, for AFSCME, and for the UAW, who all  
2 reviewed the language, who all commented on it, who all  
3 redrafted it, so I would say that those wording phrases were  
4 the combination of very, very many people who were trying to  
5 make things clear and simple for the retirees.

6 Q So you don't know --

7 THE COURT: All right. Ma'am, I can give you one  
8 more question.

9 MS. HILL: Okay. And I'm not really done either.

10 THE COURT: I'm sorry.

11 MS. HILL: I won't be done after I finish talking  
12 with her.

13 THE COURT: Okay.

14 MS. HILL: She was not --

15 THE COURT: But let's hold on that, but let me give  
16 you one more question for --

17 MS. HILL: Okay.

18 THE COURT: -- Ms. Lennox.

19 MS. HILL: Well, to state -- I'm going to go back to  
20 what she just said.

21 BY MS. HILL:

22 Q So you don't know who came up with the word phrase "other  
23 factors"; therefore, you don't know what "other factors"  
24 entailed?

25 A No, ma'am. I said that language was the product of many

1 people looking at the language and negotiating the language,  
2 so I would say it was a very collaborative process to put  
3 that language that you referred to in these documents, so I  
4 think many people had a hand in that.

5 Q And one more question. Were you concerned about the  
6 words "other factors"? I mean was that a concern? Did you  
7 hear or know of anyone that said, "Hey, 'other factors,' what  
8 does that mean?" I mean your colleagues.

9 A No, ma'am, I am not.

10 Q But anybody in your circle --

11 THE COURT: All right. All right. I'm going to  
12 have to --

13 MS. HILL: I'm sorry. Okay.

14 THE COURT: -- ask you to step aside for a few  
15 minutes while I allow Mr. Hertzberg to ask questions of  
16 Ms. Lennox.

17 MS. HILL: Okay.

18 CROSS-EXAMINATION

19 BY MR. HERTZBERG:

20 Q Good morning, Ms. Lennox.

21 A Good morning.

22 THE COURT: Can you fix that microphone for me?

23 MR. HERTZBERG: How's that?

24 THE COURT: Much better. Thank you.

25 MR. HERTZBERG: Exhibit PS14020, please. You can

1 watch.

2 MS. HILL: I have one question.

3 THE COURT: What is your question?

4 MS. HILL: Who is this gentleman?

5 THE COURT: That's Mr. Hertzberg. He represents the  
6 city.

7 MS. HILL: Okay.

8 THE COURT: He's an attorney.

9 MS. HILL: And when he makes his statements, am I in  
10 a position to say something about what he's saying?

11 THE COURT: What we're going to do is I'm going to  
12 let him ask his questions and take the witness' answer, and  
13 then I will give you a brief opportunity to respond. Okay?

14 MS. HILL: Yes.

15 THE COURT: So let me ask you to try to make notes  
16 there of what you want to say because I don't want to go back  
17 and forth and back and forth and back and forth. He'll have  
18 his turn, and you'll have your turn. Okay?

19 MS. HILL: Okay.

20 MR. HERTZBERG: Thank you, your Honor.

21 BY MR. HERTZBERG:

22 Q Ms. Lennox, do you recognize that document?

23 A I do.

24 Q And what is that document?

25 A This is the -- it's the cover page of a slide deck that

1 was presented by counsel for the General Retirement System at  
2 a public meeting that the Retirement System had to explain  
3 the pension aspects of the plan to its membership.

4 Q And who was its membership?

5 A The participants in the General Retirement System.

6 MR. HERTZBERG: Could you bring up page 29, please?

7 BY MR. HERTZBERG:

8 Q Do you know the date that this presentation was made?

9 A I believe they made this presentation on June 5th, 2014.

10 Q And on page 29, do you recognize that page?

11 A I do.

12 Q And what does it indicate on page 29?

13 A It's a general explanation of how the ASF recoupment  
14 process would work under the plan of adjustment.

15 Q Is there any disclosure of the 6.75-percent interest rate  
16 on the ASF in it?

17 A Yes, there is.

18 Q And what does it say?

19 A The second bullet says, "Excess interest amount is  
20 actuarially converted to a monthly lifetime annuity amount  
21 based upon your life expectancy, interest at the actuarially  
22 assumed rate, paren, 6.75 percent, close paren, and the type  
23 of benefit selected at the time of retirement."

24 MR. HERTZBERG: Your Honor, I'd move admission of  
25 this document into evidence. It was listed as an exhibit.

1 We objected to it as hearsay, but we were the only one who  
2 objected, and we're withdrawing our objection on hearsay.

3 THE COURT: And what did you say the number is?

4 MR. HERTZBERG: It is PS14020.

5 THE COURT: All right. It is admitted.

6 (Exhibit PS14020 received at 9:08 a.m.)

7 MR. HERTZBERG: Thank you, your Honor.

8 THE COURT: Do you know -- were you at this  
9 presentation?

10 THE WITNESS: I was not at the presentation, your  
11 Honor. I had seen an advance copy of this before it was  
12 presented, so -- to check it. They asked the city to check  
13 it for accuracy.

14 THE COURT: Do you know how many people attended  
15 this presentation?

16 THE WITNESS: I do not, but I do know it was posted  
17 on their website immediately after the presentation.

18 THE COURT: Whose website?

19 THE WITNESS: The General Retirement System's  
20 website.

21 MR. HERTZBERG: Your Honor, may I approach the Court  
22 with a stipulation that was entered and give a copy to the  
23 witness?

24 THE COURT: Yes.

25 MR. HERTZBERG: Your Honor, I'd ask to have this

1 marked as proposed Exhibit 777 of the City of Detroit.

2 THE COURT: Okay.

3 (City Exhibit 777 marked at 9:09 a.m.)

4 BY MR. HERTZBERG:

5 Q Ms. Lennox, do you recognize this document?

6 A I do.

7 Q What is this document?

8 A This is a stipulation that I negotiated with counsel for  
9 the Retiree Committee and counsel for the two largest  
10 Retirement Systems regarding the correction on the disclosure  
11 of the ASF recoupment period in the plan of adjustment.

12 Q Can you turn to page -- was this document entered by the  
13 Court?

14 A Yes, it was.

15 MR. HERTZBERG: Your Honor, I'd move for admission  
16 of document -- City Document 777, please.

17 THE COURT: It is admitted.

18 (City Exhibit 777 received at 9:10 a.m.)

19 BY MR. HERTZBERG:

20 Q Can you turn to page 9 of 39 of that document, please?

21 A Yes.

22 Q What is that?

23 A That is the form of a letter that, should the stipulation  
24 be approved, we were intending and did send to the ASF  
25 recoupment folks, who were -- where the calculations would

1 have changed a little bit based on the correction of the ASF  
2 recoupment period date -- dates.

3 Q Turn to page 2 of that letter, 10 of 39, please. Does  
4 that letter at any point mention the 6.75-percent rate on the  
5 ASF recoupment?

6 A It does.

7 Q Whereabouts?

8 A At the end of the first full paragraph on that page, the  
9 third line up from the bottom.

10 Q And what does it say exactly? Could you read it, please?

11 A The last sentence of that paragraph reads, "If you are a  
12 current retiree, the estimated annuity savings fund monthly  
13 recoupment amount on your ballot was calculated using  
14 actuarial assumptions, including but not only life expectancy  
15 and an interest component calculated at 6.75 percent, which  
16 is the rate used in the plan for the valuation of pension  
17 assets and the targeted rate of return."

18 Q Was this sent out to retirees?

19 A It was sent out to some retirees, yes.

20 Q How many?

21 A About 3,200.

22 Q And what was the total universe of retirees, if you know?

23 A Well, the total universe of pension --

24 THE COURT: You mean GRS retirees?

25 MR. HERTZBERG: Yes. I'm sorry, your Honor. GRS

1 retirees.

2 THE WITNESS: Yeah. The total universe of GRS  
3 retirees was maybe 11 to 13,000. I know there are about  
4 11,000 subject to ASF recoupment, but some of those were  
5 actives. I think about 5,000 or so of those were retirees as  
6 opposed to actives or inactives.

7 BY MR. HERTZBERG:

8 Q You talked about a plain language document that was sent  
9 out to GRS retirees. What was that?

10 A That was an insert that was included with the  
11 solicitation materials that were sent out to Class 11 and  
12 Class 10 in this case, Class 11 participants. And the  
13 purpose of it -- because we knew the disclosure statement was  
14 going to be kind of an overwhelming document for folks to get  
15 through, so the purpose of the plain language statement was  
16 to try to pull out the relevant pension and retiree  
17 healthcare information and include that in a separate  
18 document that would be easier and shorter to read and to try  
19 to, as much as we could, eliminate, you know, legalese and  
20 defined terms and plan stuff that normally appears in a  
21 disclosure statement to try to make the concepts a little  
22 more understandable to the folks that were receiving the  
23 documents.

24 Q Did it mention the interest rate?

25 A That document disclosed the concept and the annuitization



1 process. It didn't have the exact interest rate number in  
2 it, but it did provide a number of examples of how ASF might  
3 be calculated.

4 Q Did you negotiate that document prior to sending it out  
5 with anyone?

6 A Oh, yes. That was heavily, heavily edited and  
7 negotiated.

8 Q And who did you negotiate it with?

9 A The folks that I had mentioned before, counsel for the  
10 Retiree Committee, counsel for the Retirement Systems,  
11 counsel for the two largest retiree associations in the city,  
12 counsel for the AFSCME, UAW, and the four safety unions.

13 Q At any point, did they indicate to you that you needed to  
14 include the 6.75 percent in the notice that went out --

15 A No.

16 Q -- the plain language?

17 A No.

18 Q You talked about the ballots.

19 A Yes.

20 Q You indicated to the Court, I believe, that the ballots  
21 did not mention that it was 6.75 percent; is that correct?

22 A That is correct. That number does not appear on the  
23 ballot.

24 Q But you did indicate that there was a calculation  
25 provided on the ballots; correct?

1 A Yes.

2 Q And what was the purpose of the calculation that was set  
3 forth in the ballots sent to the retirees?

4 A We thought that that would provide the clearest best  
5 evidence to the retirees that were being asked to vote on the  
6 plan of the precise effect, the exact effect that the plan of  
7 adjustment, as proposed, would have on their pensions going  
8 forward.

9 Q Did it include -- if there was an ASF recoupment for the  
10 GRS retirees, did it include a net amount of what their  
11 payment would be and what they would receive as a retiree?

12 A If the ASF were taken out?

13 Q Yes.

14 A Yes, it did.

15 Q And did that include a calculation in it of the 6.75  
16 percent?

17 A It did.

18 Q Was this ballot approved by any of the Retiree  
19 Committees, associations, or other parties prior to sending  
20 the ballot out to vote?

21 A It was signed off by those parties and by the Court.

22 Q The six or seven or so parties you indicated  
23 previously --

24 A Yes.

25 Q -- on the plain notice?

1 A Yes.

2 MR. HERTZBERG: Your Honor, I have no further  
3 questions.

4 THE COURT: All right. Ma'am, you may step down.  
5 Thank you very much.

6 (Witness excused at 9:15 a.m.)

7 THE COURT: I can give you a couple more minutes.

8 MS. HILL: Now, will I have the opportunity to do a  
9 testimony?

10 THE COURT: You did not designate yourself to  
11 testify. You designated Ms. Lennox and --

12 MS. HILL: Ms. Florence.

13 THE COURT: -- Ms. Florence, yes.

14 MS. HILL: And the reason why I asked, the first  
15 retiree objector had Kevyn Orr as -- she was questioned by  
16 him, and she also had the opportunity to express her  
17 concerns.

18 THE COURT: Well, she had asked for that, and I  
19 granted that, but you didn't ask that for yourself.

20 MS. HILL: Okay. Well, I'd like to call upon you to  
21 allow me to do that. There's some things that I need to have  
22 known that will not come from witnesses. I prepared myself  
23 to let that information be known, but I didn't prepare it as  
24 something that I would have a witness to talk about.

25 THE COURT: All right. I'll give you three minutes,

1 ma'am.

2 MS. HILL: Okay. Well, I'd like for you to give me  
3 three minutes and allow me to make some statements from the  
4 gentleman here that was just here and the questions that he  
5 posed to Ms. Lennox. Number one, he talked about the town  
6 hall meeting that was done by the GRS June 5th. Yes, there  
7 was a slide presentation, and, yes, that slide did -- or  
8 might have mentioned the 6.75 percent on it, but my concern  
9 is that we sat there for about an hour watching the slide  
10 presentation, which was high up in the sanctuary. We sat  
11 there for an hour looking at the slides. The slides went by  
12 pretty fast, and nothing was really specified. It was all  
13 talk and no discussion. I am yet to find someone that  
14 remembers seeing that 6.75 percent. I was there. I can't  
15 recall the 6.75 percent. And the kicker of it all is that we  
16 did not receive a hard copy, and when the representative from  
17 GRS was there, he didn't expound on the 6.75 percent. That  
18 was a good opportunity for him to educate these hundreds of  
19 people that were sitting in the sanctuary.

20 THE COURT: Well, okay, but let me ask you this  
21 question, ma'am.

22 MS. HILL: Um-hmm.

23 THE COURT: Why wasn't it sufficient to properly  
24 decide whether to vote for or against the plan to have right  
25 on the ballot the dollar amount that was involved in this

1 issue?

2 MS. HILL: Why wasn't it sufficient?

3 THE COURT: Right. That's the city's position,  
4 so --

5 MS. HILL: Okay.

6 THE COURT: -- I want to hear you tell me why --

7 MS. HILL: Okay.

8 THE COURT: -- I should not accept that position.

9 MS. HILL: My concern is that had we known that that  
10 was a part of the calculation, perhaps in my wildest dreams  
11 or something that's really possible, we could have gone back  
12 to the table to talk about that. If you're taking these  
13 hundreds and thousands of dollars from retirees, I think the  
14 least you can do is let us know what that money entails. The  
15 report that Ms. Lennox talked about on the ballot, it did not  
16 break down what that money was for. Yeah, it said we're  
17 going to take thousands from you, but it did not say the  
18 thousands also include 6.75 percent. I think we should have  
19 known that. And just as the bondholders were able to bring  
20 something back to the table, we could have been in the  
21 position to bring something back to the table.

22 THE COURT: Did you go on the website --

23 MS. HILL: Um-hmm.

24 THE COURT: -- to see about this at all?

25 MS. HILL: About the 6.75?

1 THE COURT: Yeah.

2 MS. HILL: Yes, I did, and I combed through a lot  
3 of -- combed through a lot of documents. I just have this  
4 problem with the fact that it was not exposed, and I still in  
5 my heart of hearts believe that that was something that could  
6 have been put on the table. And in my research -- I don't  
7 want to say this, but I'm going to say it anyway -- that 6.75  
8 percent could have been one of the factors where people would  
9 not have voted because that 6.75 is there. That amount of  
10 interest is excessive. The creditors for the City of Detroit  
11 like Bank of America and U.S. Bank and USB, they don't even  
12 charge that much for 15- and 30-year mortgage rates. They're  
13 below five percent. So my understanding -- what I can't wrap  
14 my arms around is why is this so excessive, and why is it  
15 that we're paying this money back for so long?

16 THE COURT: All right. Let me ask you to wrap up,  
17 please.

18 MS. HILL: Okay. I did have a witness that --

19 THE COURT: Well, I'm afraid we've used up all your  
20 time at this point.

21 MS. HILL: Okay. And I really didn't want to talk  
22 to Ms. Lennox nor did I want to talk to Orr. They were not  
23 on my list to be talked to. What I want to do -- and I'm  
24 going to send --

25 THE COURT: I'm not sure what you mean by that. I

1 agree with you that Mr. Orr was not on your list, but you  
2 specifically asked to question Ms. Lennox, and I granted  
3 that.

4 MS. HILL: And I had a letter that said that I  
5 couldn't because of who she was, so I had resolved --

6 THE COURT: All right. Let's move past that --

7 MS. HILL: Okay.

8 THE COURT: -- and just let me ask to wrap up.

9 MS. HILL: Okay. Let me summarize my statement  
10 here, and I'll just get straight to the -- to my conclusion.  
11 Okay. I want to ask, Judge, that you -- wait one second. I  
12 want you to be patient with me, please.

13 THE COURT: Uh-huh.

14 MS. HILL: Okay. Murphy's law. Let me just say  
15 that I'd like to ask, your Honor, that you would strike that  
16 6.75 percent from the clawback. Just as deals or adjustments  
17 were made for Syncora and FGIC and I can sort of say the  
18 police and fire, I'd like for you to strike it among the deal  
19 with the retirees. I'd like for you to allow Mr. Orr or  
20 someone in his camp to provide us with information about the  
21 makeup of this clawback. We need to know what comprises that  
22 money that they're taking from us. We need to know that  
23 information. We need to know it on an individual basis  
24 especially when this life expectancy was done as individuals.  
25 I think we should get individual information about it.

1           I also need to understand why the reports are saying  
2   that the calculation was based on life expectancy. If it was  
3   based on life expectancy, then that means that money should  
4   not be withheld from the retirees until death, but that also  
5   raises another issue. It's nowhere written that we're  
6   supposed to pay until we die and beyond, and I guess that's  
7   the part where I need to have some clarity. Are we to pay  
8   this until we die and beyond, or is it a cutoff period which  
9   would satisfy the life expectancy? There are a lot of  
10   questions that are not answered that we need to know, but  
11   mainly I'd like for you to consider to strike that 6.75  
12   percent.

13           THE COURT: I think the -- I'll ask the city to  
14   confirm this, but I think the city did agree that the  
15   recoupment or clawback payments would terminate when the  
16   retiree reaches the life expectancy. Hold on. We'll get  
17   that confirmed.

18           MS. HILL: Yeah. And we need to have --

19           THE COURT: Am I right about that? Ms. Lennox, you  
20   can just answer. That's okay.

21           MS. LENNOX: That is true, your Honor. I believe  
22   Mr. Moore testified that once the full calculation using the  
23   life expectancy and the interest rate is satisfied, then the  
24   payments will terminate -- or the recoupment will terminate.

25           THE COURT: Yeah. I thought I recalled that. Thank



1     you.

2                 MS. HILL: And that's another "other factor" that  
3 needs to be put in writing, and I think that'll dispel some  
4 of the distrust that we have with what's going on relative to  
5 these bankruptcies.

6                 THE COURT: All right. Thank you.

7                 MS. HILL: Okay. Now, will I get an answer from  
8 someone to the 6.75, or will it be in a document, to strike  
9 that down?

10                THE COURT: Well, I will rule on it as part of my  
11 ruling on the confirmation of the city's plan.

12                MS. HILL: Okay.

13                THE COURT: Right.

14                MS. HILL: Okay.

15                (Witness excused at 9:25 a.m.)

16                THE COURT: Okay. Let's see again if Ms.  
17 Industrious is here with her witness, Mr. Taubitz. No.  
18 Okay. We'll move on. The next person on my list is Fredia  
19 or Fredia Butler, who's going to testify on her own behalf  
20 for 20 minutes. Is she here? Let me ask you to step  
21 forward, please, ma'am, because I'm going to have you testify  
22 as a witness in the witness stand. And before you sit down,  
23 please raise your right hand.

24                         FREDIA M. BUTLER, WITNESS, SWORN

25                THE COURT: All right. Please sit down in the chair

1       there.

2               MS. BUTLER: Good morning, your Honor.

3               THE COURT: Good morning.

4                               DIRECT TESTIMONY

5               MS. BUTLER: As a citizen of the City of Detroit, I  
6       file an objection to the plan of adjustment that would send  
7       many retirees into poverty. I believe that it is an unjust  
8       plan to impose on people who have worked many years with the  
9       promise and hope that they will be able to survive on funds  
10      that they expected to receive in their retirement years.  
11      When Mr. Kevyn Orr was asked what he would say to the  
12      retirees on the program "60 Minutes" about the money that  
13      would be taken from them, he stated, quote, "I am sorry."  
14      Judge Rhodes, I am an African-American, and I believe from  
15      our history it has always been someone who looks like us to  
16      be put in place to do work against us. Mr. Orr is the  
17      overseer, and Governor Snyder is the master who is really  
18      behind all the decisions being made. I have been to many  
19      meetings and have learned that Detroit did not have to be  
20      placed in bankruptcy. This was and is a power grab by  
21      withholding funds and destroying our educational system. The  
22      method used is so bold that they are taking our tax dollars  
23      and giving them to profit-making corporations at the expense  
24      of missing educating our children and the well-being of us.  
25               Judge Rhodes, I call this a planned racist act.

1 With the stroke of a pen, the pensioners' lives would be  
2 changed from the presented plan, a reduction in pensions,  
3 healthcare benefits, and the unjust clawback.

4           Your Honor, I believe that you are not pleased with  
5 what has been presented to you. My reason is when you asked  
6 questions of Mr. Orr, he would go back and make changes to  
7 try to get your approval. I pray daily for our leaders to be  
8 just and for them to make wise and right decisions. It has  
9 been stated by some on Wall Street that the inequality of  
10 income is not sustainable. There are some who never get  
11 enough.

12           Judge Rhodes, the changes that have already been  
13 made have changed many lives, not only for the people who  
14 worked for the city but for each citizen in the City of  
15 Detroit. What is happening in our city and throughout the  
16 United States, I believe, is that our county is moving toward  
17 becoming an oligarchy rather than a democracy. We were  
18 ignored when we collected thousands of signatures against  
19 having an emergency manager. Belle Isle was taken. Many  
20 city services have been privatized. Land reported valued at  
21 more than \$2.9 million was given away for one dollar. Our  
22 water and the DIA all belong to the citizens of Detroit, are  
23 being threatened to be sold or privatized.

24           Judge Rhodes, my nephew, Jerry Cartwright, gave me a  
25 T-shirt that I proudly wear. He was a proud United States

1 Marine who served in Vietnam. He lost a leg and the full use  
2 of his left arm while serving. On my T-shirt is a quote by  
3 Ms. Marion Wright Edelman. It says, quote, "Democracy is not  
4 a spectator sport." I am praying for justice. Judge Rhodes,  
5 you have the power to render justice. Thank you.

6 THE COURT: Thank you, ma'am. Any questions for the  
7 witness?

8 MR. SHUMAKER: None from the city, your Honor.

9 THE COURT: All right. Ma'am, thank you again. You  
10 may step down.

11 (Witness excused at 9:30 a.m.)

12 THE COURT: Next on my list is Elaine Thayer. Ms.  
13 Thayer, are you here? Ms. Thayer will be testifying on her  
14 own behalf for up to 20 minutes.

15 MS. THAYER: Good morning, your Honor.

16 THE COURT: I'm going to ask you to step to the  
17 witness box also because you are a witness. Please raise  
18 your right hand.

19 ELAINE THAYER, WITNESS, SWORN

20 THE COURT: All right. Please sit down. You may  
21 proceed.

22 DIRECT TESTIMONY

23 MS. THAYER: My name is Elaine Thayer, and I'm  
24 representing my mother, Ona Labutte, who receives a pension  
25 as a beneficiary, and my significant other, Greg Penney, who

1 retired in 2012 and receives a City of Detroit pension.

2           If you would reference Exhibit PS14003, page 11, in  
3 the notice regarding proposed changes to pensions in the  
4 city's plan of adjustment and your right to vote on the plan  
5 on page 11 under GRS pension reductions and the GRS adjusted  
6 pension amount, it states, and I quote, "If you are a current  
7 retiree or surviving beneficiary who currently receives a  
8 monthly pension that as soon as practicable following the  
9 effective date of the plan your monthly pension will be  
10 reduced by either 4.5 percent or 27 percent," and further  
11 down, quote, "In addition, you will not receive any future  
12 COLA as to your pension payments." Neither the notice nor  
13 your right to vote on the plan address the effect that the  
14 plan of adjustment with regard to pension reductions and  
15 discontinuing COLA will have on ex-spouses under court-  
16 ordered EDROs.

17           If you'd reference Exhibit PS14004, the summary  
18 information provided in the letter from the Official  
19 Committee of Retirees to all retirees regarding the  
20 reductions in pension does not mention any reduction to  
21 survivors, beneficiaries, nor ex-spouses. Further, the  
22 summary information under COLA states that 100 percent of  
23 COLA will be eliminated for the retiree and, if applicable, a  
24 survivor or beneficiary but still no mention of ex-spouses  
25 under court-ordered EDROs. The information in all of the

1 proposed plans' documents that have been sent to retirees and  
2 employees needed to be complete with accurate information and  
3 have the same language throughout, and that is not the case.  
4 This is just one of many such examples throughout this entire  
5 process.

6           There is still the issue of reducing the pensions of  
7 defined benefit employees and retirees, reference PS14005.  
8 Under the defined benefit pension plan, and I quote, "The  
9 federal government required the City of Detroit to contribute  
10 to this plan, the defined benefit plan, and pay you, the  
11 retiree, an amount by a set formula no matter what," unquote.  
12 The city stopped contributing their required amount in 2010  
13 or prior. The smoothing method for recognizing gains and  
14 losses was adjusted in 2010 and in 2011 reducing the city's  
15 required pension contribution by approximately \$19 million,  
16 yet the city still did not comply with making their  
17 contributions as required, and the city has continued to  
18 ignore their responsibility when it comes to the  
19 contributions to the pension funds. Instead of forcing the  
20 city to come up with their necessary share of contributions  
21 due since at least 2010, the current retirees and future  
22 retirees under defined benefit are being told that they have  
23 to take reductions in their pension checks. These employees  
24 contributed what they were required to under union contract  
25 and worked until they were eligible to retire and earned

1 every dime of the pensions that are determined by their AFC  
2 and years of service. The employees didn't fail the city.  
3 The city has failed the employees and the retirees.

4           It has been determined that the employees that  
5 participated in the annuity savings fund accounts were paid  
6 excess interest during the period of July 1st, 2003, through  
7 June 30th, 2013. If you would reference Exhibit PS14006,  
8 page 2, in the information distributed to employees to assist  
9 them in understanding the differences between the 1973  
10 defined benefit plan and the 1973 defined contribution plan,  
11 otherwise known as the annuity savings fund, and the new 1998  
12 defined contribution, it states under the 1973 defined  
13 contribution plan, and I quote, "The board invests all the  
14 money contributed and pays you a guaranteed rate of return,  
15 currently 7.9 percent. Some years it may pay you a bonus.  
16 It's good to know that the average rate of return on the  
17 defined contribution plan or annuity savings fund has  
18 exceeded 15 percent since 1982," unquote. The wording here  
19 is guaranteed rate, not variable. If times called for a  
20 change from the guaranteed rate of 7.9 percent, that should  
21 have been handled through the proper channels at the time,  
22 not in the City of Detroit's bankruptcy case. When the AFC  
23 accounts earned an average of 15 percent from 1982 through  
24 1998, the employees who participated in this program  
25 continued to receive the 7.9 percent, yet when the ASF

1 accounts were recently investigated and it was found that the  
2 participants were paid a higher percentage than the actual  
3 earnings during July 1st of 2003 through June 30th of 2013,  
4 the participating employees are expected to pay back portions  
5 of what they received.

6           If you'd reference Exhibit PS14007, in reading the  
7 active or terminated employee recoupment on page 17 and 18 of  
8 the notice regarding proposed changes to pensions in the  
9 city's plan of adjustment and your right to vote on a plan,  
10 it states, and I quote, "The actual return means the actual  
11 net percentage on invested General Retirement System assets  
12 for each year from July 1st, 2003, through June 30th, 2013,  
13 unless the return is greater than 7.9 percent, in which case  
14 7.9 percent will be used, or less than zero percent, in which  
15 case zero percent will be used. The difference between the  
16 value of your recalculated annuity savings fund account using  
17 the actual return and the actual value of your annuity  
18 savings fund account as of June 30th, 2013, is your actual  
19 savings fund excess amount," unquote. Excuse me, but  
20 "actual" is not a term that can or should be applied to any  
21 of these calculations.

22           Reference Exhibit PS14008, in a letter dated 6-28,  
23 dear holder of a Class 11 GRS pension claim who is subject to  
24 ASF recoupment, employees and retirees are offered a cash  
25 option which, quote, "Is a one-time opportunity for



1 participants subject to ASF recoupment through pension  
2 reduction to avoid that pension reduction by instead paying  
3 in a single lump sum the amount of their ASF recoupment,"  
4 unquote. Please explain to me how there can be a fixed  
5 amount due for those who choose the cash option and lifetime  
6 payments for those who choose pension deductions. The start  
7 of the ASF goes back to 1973, and now due to the city's dire  
8 circumstances, it's looking in every possible place to grab  
9 money. The very employees you are trying to recoup funds  
10 from are the employees who voluntarily contributed to the ASF  
11 and made it possible to have investment returns. It is my  
12 understanding that the ASF investment funds were combined  
13 with the GRS investments and that the GRS board of trustees  
14 had the authority to make decisions, even ones that were  
15 inappropriate and in violation of their fiduciary duties, to  
16 transfer funds to the ASF accounts to maintain a guaranteed  
17 7.9-percent rate of return. These investments were overseen  
18 by the trustees themselves, Gabriel, Roeder, Smith, the  
19 city's actuary, and Plante Moran, the auditors for the  
20 General Retirement System, which includes the ASF, and they  
21 were aware of the transfers and the results of these  
22 transfers, and they should be the ones held accountable for  
23 any misappropriation of the investment funds, not the current  
24 and future retirees. Further, this excess transfer of funds  
25 from the GRS to ASF obviously came to someone's attention in

1 2011 or prior for the city to pass Section 47-1-18C of the  
2 city code in 2011 with the intention of restricting excess  
3 transfers of interest from the GRS pension plan to the ASF  
4 with a cap of 7.9 percent and a base of zero percent. Mind  
5 you, this is the same method that the city intends to use, as  
6 I stated above, to determine your annuity savings fund  
7 excess. Assuming this section of the city code was  
8 implemented and the same methodology is being applied in  
9 calculating the recoupments, why are the years 2011 through  
10 2013 included in the ASF recoupment? I personally feel that  
11 this investigation arbitrarily decided to review only the  
12 interest payments made to the ASF accounts for July 1st,  
13 2003, through June 30th, 2013, and included that -- and  
14 concluded that the participants have to refund up to 15.5  
15 percent of their pensions to cover these excess interest  
16 payments. The ASF was established for the employees and  
17 funded by their after tax money, and those funds plus their  
18 earnings should have been held in a separate investment fund  
19 so that the crisis facing retirees today could have been  
20 avoided. Isn't it enough for the plan of adjustment to  
21 reduce a retiree's pension by at least 4.5 percent, eliminate  
22 future COLA, and skyrocket their healthcare costs?

23           Reference Exhibit PS14009, per an interview with  
24 Carole Neville, who serves as counsel for the Detroit  
25 retirees, on March 20th, 2014, she stated that the

1 elimination of any future COLA could equate to an average  
2 additional cut to general pensions of at least 19 percent or,  
3 in plain language, thousands of dollars depending on the  
4 retiree's age and life expectancy. To further show that the  
5 ASF recoupment should be removed from the bankruptcy  
6 settlement, let me remind the Court that at the hearing held  
7 on 7-15, there was mention of the ongoing reimbursements with  
8 no stop indicated even when the recoupment amount was reached  
9 as well as an additional interest charge of 6.75 percent on  
10 the amount of the recoupment. That was never stated in any  
11 material that we received.

12 Reference Exhibit PS14010, let me quote the  
13 important document, letter from the Official Committee of  
14 Retirees to all retirees, and I quote, "If Classes 10 and 11  
15 vote in favor of the plan and the plan is approved, the  
16 amount recouped will not exceed 15.5 percent. Once the  
17 reduction is determined, it will continue for the rest of  
18 your life and, if applicable, the life of your survivor  
19 beneficiary," unquote. This is not a misunderstanding on our  
20 parts. It is the information we were provided.

21 Reference Exhibit PS14011, how can the ballots show,  
22 quote, "the total estimated amount of your annual annuity  
23 savings plan recoupment is a specific amount," yet your  
24 recoupment deduction will never stop until you and any of  
25 your beneficiaries are deceased? Let me give you an example.

1 A current retiree, age 64, has been told the total estimated  
2 value of your ASF recoupment is \$20,999.81. Your  
3 estimated -- and not as Ms. Lennox stated, exact -- it's  
4 stated as estimated -- ASF monthly recoupment is 169.85. At  
5 that rate of deduction, his total recoupment would be repaid  
6 in ten years, four months. However, if this same retiree who  
7 is currently 64 lives to be 90, he will have paid the city a  
8 total of \$52,993.20. This is absolutely ridiculous. And  
9 once again, which wording in which document are we to take as  
10 being the correct wording for the proposed ASF recoupment,  
11 its implementation and controls? First and foremost, if it  
12 is determined that there will be any recoupment, every  
13 employee and retiree needs to be provided all of the  
14 calculations on a year-by-year breakdown that are done to  
15 arrive at the total recoupment amount. Second, if the  
16 recoupment plan is approved, the deductions need to include a  
17 start date, end date, and dollar cap amount.

18 Reference Exhibit PS14012, at the hearing on 7-15,  
19 one of the individuals, Steven Wojtowicz, who spoke without  
20 counsel, brought up the subject of there being an additional  
21 6.75-percent interest added to the recoupment cap. That has  
22 never been mentioned in any of the bankruptcy documents. Let  
23 me refer the Court to the transcript from the July 15th,  
24 2014, afternoon session for his complete statement as well as  
25 my typed copy of the statement from that hearing.

1           Reference Exhibit PS14013, at the same hearing, it  
2   was mentioned that ballots had been sent out containing  
3   errors, and in a statement in USA Today dated May 28th, 2014,  
4   Bill Nowling, Detroit emergency manager Kevyn Orr's  
5   spokesman, stated, and I quote, "Of the erroneous ballots,  
6   1,100 were sent to active employees and 1,100 sent to  
7   retirees," he said, "they will all get new ballots and their  
8   old ballots will be canceled," unquote. I can only speak on  
9   behalf of my mother, Ona Labutte, and Gregory Penney that  
10   they, in fact, never received any corrected ballots. How  
11   many more did not receive corrected ballots? I'm sure the  
12   corrected ballots weren't sent out with return receipt, so  
13   what proof is there other than a list of names that these  
14   corrected ballots were ever sent out? In my opinion and I'm  
15   sure the opinions of anyone who has carefully reviewed the  
16   contents of the proposed recoupment, the entire issue of  
17   annuity savings fund recoupments needs to be withdrawn from  
18   the bankruptcy proceedings before this Court. The  
19   information in the court documents and to the retirees and  
20   employees has been confusing and misleading by stating what  
21   an individual's total estimated recoupment is when, in fact,  
22   that is not the case due to having no end date as well as  
23   having a hidden agenda to add 6.75-percent interest to the  
24   recoupment caps without ever divulging that in writing to  
25   this Court or the individuals who would be subject to the

1    recoupment.

2               Reference Exhibit PS14014, the ballot with respect  
3    to pensions included a statement regarding the ASF which  
4    stated, and I quote, "If the plan is confirmed, you will not  
5    be able to challenge the annuity savings fund recoupment that  
6    will be deducted from your monthly pension check," unquote.  
7    That statement alone throws up a red flag. The plan isn't  
8    even in its final stages and your approval, but they make it  
9    very clear that if and when the plan does get confirmed, you  
10   won't be able to challenge your annuity savings fund  
11   deduction. I believe everyone's first concern in voting on  
12   this ballot was to preserve their earned pension. To tack on  
13   decisions regarding an annuity savings fund recoupment  
14   without having disclosed all the facts surrounding this  
15   recoupment and to state that if the plan is approved you  
16   can't challenge your recoupment was, in my opinion, not a  
17   mistake but intentional. Separate ballots were issued for  
18   pension votes and healthcare votes. Why not a separate  
19   ballot for the ASF recoupment? And, further, the attempt to  
20   clarify the 6.75-percent interest on the recoupment at this  
21   late date is too little too late for all involved.

22              Reference Exhibit PS14015, quite frankly, the whole  
23   matter of the annuity savings fund recoupment appears to me  
24   to fall under perpetrating fraud. For one thing, a false  
25   representation, actual or implied, or the concealment of a

1 matter of the facts material to the transaction, including  
2 the ballot errors and the fact that there was an additional  
3 6.75-percent interest rate. Second, the fact that someone  
4 had to have known they were lying or hiding the truth by not  
5 revealing all the facts about the annuity savings fund in the  
6 bankruptcy documents and to the individuals involved. Third,  
7 the lack of providing this information shows the intent to  
8 mislead another into relying on misrepresentation so that  
9 individuals voted to accept the pension reductions of 4.5  
10 percent as well as the tacked on agenda of the ASF  
11 recoupment. Fourth, reliance, but with a right to rely on  
12 what we were told as everyone has had to rely on the  
13 information and rather -- or, rather, misinformation  
14 presented to them by this Court, the bankruptcy documents and  
15 the Retirement System, which lacked information and  
16 consistency. And last but not least, this would prove to be  
17 a legal injury which would cost everyone additional money as  
18 well as additional pain and suffering. And it is my  
19 understanding that these five circumstances are what are used  
20 to establish fraud in a court of law.

21           The City of Detroit along with many other cities  
22 made promises to their employees with regards to pensions for  
23 their retirees not knowing whether they would be able to meet  
24 the demands or not.

25           Reference Exhibit PS14016, yet in 1963 the state

1 Constitution of Michigan, Section 24, public pension plans  
2 and Retirement Systems' obligation was put to a vote, and the  
3 residents of the state approved the following language, and I  
4 quote, "The accrued financial benefits of each pension plan  
5 and retirement system of the state and its political  
6 subdivisions shall be a contractual obligation thereof which  
7 shall not be diminished or impaired thereby," unquote.

8 Section 24 that was voted on to become part of our state  
9 Constitution of Michigan didn't say only in good times.

10 Governor Rick Snyder took office on January 1st, 2011, and  
11 part of his oath of office was to uphold that Michigan  
12 Constitution. I realize that these are different times from  
13 1963 when Section 24 was approved and made part of our state  
14 Constitution, but there have been many down times since then,  
15 and the defined benefit pension benefits were never under  
16 fire as they are today.

17           Reference Exhibit PS14017, for current employees the  
18 pension that they have accrued under the defined benefit  
19 pension plan was to have been frozen as of June 30th, 2014,  
20 and the new GRS plan implemented. In the question and answer  
21 document Detroit General Retirement System under the plan of  
22 adjustment it states that, and I quote, "The benefit formula  
23 under the new GRS pension plan is 1.5 percent of your average  
24 final compensation per year of credited service," unquote.  
25 Without hearing or reading anything further, I can tell you



1 that this new GRS pension plan is another defined benefit  
2 plan. If the city was changing over to a defined  
3 contribution pension plan, there would be no AFC calculations  
4 because when the employee is paid weekly or biweekly, his  
5 and/or the city's pension contributions are deposited into an  
6 account set up in the employee's name at most likely Great  
7 West Retirement Services. I question why the city is  
8 retaining a defined benefit pension plan under the new  
9 General Retirement System pension instead of changing over to  
10 defined contribution pension funded solely by the employees  
11 to relieve the city of future liability. Has the city --

12 THE COURT: I'm going to ask you to wrap up in one  
13 more minute, please.

14 MS. THAYER: Okay. Has the city not learned  
15 anything throughout this process? Who can or will be trusted  
16 to oversee this new plan? Some of the same individuals who  
17 got here this time? Who is going to set up -- who's going to  
18 be set up to cover all of the debts the next time around?  
19 Even though a current employee's pension will be calculated  
20 and frozen, the future years of employment will be  
21 calculated, and a liability remains with the city and the  
22 Retirement System to honor those payments. After what the  
23 retirees and employees are seeing happen to all the written  
24 promises regarding pensions, COLA, and healthcare, why would  
25 anyone ever expect this new Retirement System plan to ever be

1 upheld?

2           Reference Exhibit PS14018, in a letter that I  
3 drafted to all of the major parties, I stated that along with  
4 other issues, the city pays all of their employees pension on  
5 not just the regular hours but all overtime hours and double  
6 time hours, and that should have been curtailed long ago. I  
7 have a document. It's a master agreement between the City of  
8 Detroit from 2005 to 2008, and nowhere in there does it state  
9 how the pension should be applied, whether to regular hours  
10 or to overtime or not, but it should be curtailed.

11           On behalf of the current retirees and the future  
12 retirees of the City of Detroit, I respectfully request that  
13 you reconsider recouping any funds from any retirees and  
14 employees with regard to the annuity savings fund by removing  
15 this item from the proposed plan of adjustment for the City  
16 of Detroit. Thank you.

17           THE COURT: Thank you. Any questions for the  
18 witness?

19           MR. SHUMAKER: No questions from the city, your  
20 Honor.

21           THE COURT: All right. Thank you again. You may  
22 step down. Next we have either Yvonne Cecily -- I'm sorry --  
23 Yvonne Williams-Jones or Cecily McClellan examining either --  
24 excuse me -- either David Kausch or Judith Kermans for 20  
25 minutes. Both is fine, sure. Good morning.

1 MS. JONES: Good morning.

2 THE COURT: What are your names, please?

3 MS. JONES: Yvonne Williams-Jones.

4 MS. MCCLELLAN: Cecily McClellan.

5 THE COURT: Okay. Now, do you want to ask questions  
6 of Mr. Kausch or Ms. Kermans or both?

7 MS. JONES: I think Mr. Kausch. He actually did the  
8 report, I think, the one who actually did the actuary  
9 valuation report.

10 THE COURT: You'd like to ask questions of Mr.  
11 Kausch?

12 MS. JONES: Yes.

13 THE COURT: Okay. Is Mr. Kausch here? So, ladies,  
14 can we excuse Ms. Kermans, or do you want to save the  
15 opportunity to question her, too?

16 MS. JONES: We'd like to save it --

17 THE COURT: Okay.

18 MS. JONES: -- your Honor.

19 THE COURT: You understand you have 20 minutes for  
20 both of them?

21 MS. JONES: Yes.

22 THE COURT: Okay. Mr. Kausch, would you step  
23 forward, please, and raise your right hand?

24 DAVID KAUSCH, WITNESS, SWORN

25 THE COURT: All right. Please sit down over there.

1 And you may proceed.

2 MS. JONES: Thank you. Thank you for this  
3 opportunity. Thank you.

4 THE COURT: You're welcome.

5 DIRECT EXAMINATION

6 BY MS. JONES:

7 Q I'd like to start off -- would you just state your name  
8 again so everybody --

9 A Yes. My name is David Kausch. I'm the chief actuary of  
10 Gabriel, Roeder, Smith.

11 Q And could you tell us how long Gabriel, Roeder, Smith &  
12 Company have been in business?

13 A We've been in business over 75 years.

14 Q And how long has your company been providing actuary  
15 valuations for the City of Detroit's Retirement Systems?

16 A As I understand it, about the same length of time.

17 Q About the same?

18 A Yes.

19 Q Okay. The questions that we have were referenced to the  
20 75th annual actuary valuation report as of June 30th, 2013.  
21 I'd like to reference our Exhibit PS14700 of the actuarial  
22 report as of June 30th, 2013, pages A-8, entitled "Comments,  
23 Conclusions" -- concluded --

24 A Yes.

25 Q And it starts off talking about the GASB, the

1 Governmental Accounting Standard Board, changes. For the  
2 plan year beginning in 2013, new reporting standards would be  
3 required. The new reporting standards will be substantially  
4 different from the current standards. The question I have on  
5 that, will these changes have an effect on the General  
6 Retirement System's ability to meet its obligations to the  
7 fund's members?

8 A I think the short answer to that is no. Those new  
9 accounting standards are just the way the numbers are  
10 presented for accounting. They don't change how the plan is  
11 actually funded.

12 Q Okay. Thank you. Next I would like to talk about in  
13 that exhibit the solvency of the General Retirement System,  
14 Exhibit P414700, the annual actuary valuation report of June  
15 30th, 2013, on page A-9. In the report it states that the  
16 funding objective of the General Retirement System is to meet  
17 long-term benefits promised through contributions made during  
18 members' working careers which, combined with investment  
19 income on System assets, would be sufficient to pay benefits  
20 throughout their retired lives. Is this the ultimate test of  
21 financial soundness for the Detroit Retirement System fund?

22 A That is the financing objectives, that they will build up  
23 assets to pay the benefits for the life of the members, yes.

24 Q Is this what you described in your report as the long-  
25 term solvency test?

1 A Let me see. The long-term solvency test is to track the  
2 progress towards that objective, yes.

3 Q Which this is the objective of the System, per that  
4 statement? Shall I read it again, the objective of the  
5 System, or would you like to read it?

6 A The objective of the system -- I'm not sure where you  
7 were. So the objective is --

8 THE COURT: What she wants to know is whether the  
9 long-term objective of the System, the Retirement System, is  
10 to invest its assets in a way that will allow it to meet its  
11 obligations to pay pensions.

12 THE WITNESS: Right. It's to -- and it is also to  
13 fund that through employer and member contributions over time  
14 so that the assets are sufficient to pay those benefits, and  
15 this is the test to determine that. This test compares the  
16 assets on hand versus the liability, if you will, or the  
17 present value of all those benefits out there to see how the  
18 System is tracking. It's a test that we prepare every  
19 valuation, and those numbers fluctuate over time.

20 BY MS. JONES:

21 Q In terms of the long-term solvency test, how is the  
22 General Retirement System doing?

23 A As of this valuation date on page A-9, you can see June  
24 30, 2013, the last row, the very last percent at the far  
25 right shows a total percent of accrued liability covered by

1 assets of 70 percent. That's what we would refer to as 70-  
2 percent funded, so there is an unfunded that needs to be  
3 funded essentially.

4 Q Okay. The funding level that you quoted is part of your  
5 short-term solvency test, correct, because you describe two  
6 in the report --

7 A Yes.

8 Q -- the long-term and the short-term? I haven't got to  
9 the short-term yet.

10 A I'm sorry.

11 Q I just wanted to kind of clarify the definition of the  
12 long-term solvency test per your statement in the report.

13 A Correct. The long-term solvency test really has more to  
14 do with the contributions necessary to maintain the long-term  
15 solvency. We track that with the short-term solvency test.  
16 I apologize for getting ahead of myself.

17 Q That's okay.

18 A So part of our role as the actuary is to determine how  
19 much the city needs to contribute in order to meet the long-  
20 term solvency, and that information is not actually presented  
21 on this page.

22 Q Yes. I understand. But just going by the statement --

23 A Yes.

24 Q Yes. Okay. So can we say then it's true that the  
25 city -- per the statement, the city is meeting its long-term

1 solvency test per your statement?

2 A At that point in time, prior to the bankruptcy, the city  
3 was contributing towards that objective on that long-term  
4 solvency basis.

5 Q Okay. Okay. And then is it true that the GRS has  
6 followed the discipline of level percent of payroll  
7 financing, liabilities for active members, contributions on  
8 deposit, and liabilities for future benefits to present  
9 retired lives -- to present -- retired lives will be fully  
10 covered by present assets and then in parentheses except in  
11 rare circumstances? You say it, and I wanted to ask what  
12 would be those rare circumstances, if you know?

13 A One example of a rare circumstance would be the severe  
14 market downturn at the beginning of the great recession which  
15 caused a significant amount of an asset loss in all pension  
16 plans across the country.

17 Q Is there anything else you can think of other than the  
18 downturn of the market?

19 A That's the most significant one that comes to mind.

20 BY MS. MCCLELLAN:

21 Q It's often mentioned about the great recession and  
22 particularly in 2009. Did the pension plan -- I mean the  
23 annuity recoup itself after that beginning in 2010 up to  
24 today?

25 A Since the downturn, the System has had rates of return on



1 the market value of assets in excess of our annual  
2 expectations. That said, I don't believe they have fully  
3 recovered everything that they have lost since that point in  
4 time.

5 Q Is it correct that in 2011 the rate of return was at 20  
6 percent?

7 A I don't have the actual figures in front of me that --

8 Q Okay. So you don't know that answer?

9 A I don't know the answer to that specifically, no.

10 Q Okay. Do you know the answer to -- if you took the  
11 period that is -- of the annuity clawback from 2003 up  
12 until -- I think -- well, they started at 2004 actually  
13 through 2013, would the pension plan have a negative rate of  
14 return, or would there have been a smoothing at this point  
15 that it would have been a positive rate of return?

16 A Again, I don't have that information with me. I don't  
17 really have enough information to answer that question.

18 MS. MCCLELLAN: Thank you.

19 BY MS. JONES:

20 Q The liabilities for service already rendered by active  
21 members are partially covered by the remaining assets, and is  
22 it true that as long as contributions to the System are  
23 received in a timely manner, the System will pay all promised  
24 benefits when due?

25 A That is the financing objective, yes.

1 Q Once the city makes its pension contributions current,  
2 what effect will this have on the underfunded liabilities?

3 A It depends on what you mean by "makes its contributions  
4 current." The unfunded liability is anticipated to be  
5 financed over a number of years, so even -- it's a bit of a  
6 hypothetical since we're, you know, in the bankruptcy.

7 Q Again -- okay. That kind of gets to the short-term  
8 solvency test. The report also mentions the short-term  
9 solvency test as the means of checking the progress under its  
10 funding plan, and then Exhibit PS14700 at the bottom of the  
11 page of A-9 is the short-term solvency test year comparison  
12 statement. Can you explain why the rates of fundings are  
13 decreasing under the columns that states "Portion of accrued  
14 liabilities covered by assets"?

15 A Yes. I mentioned that with the downturn in 2009, the  
16 great recession brought down the assets very quickly on a  
17 market basis. For purposes of the valuation and for the  
18 purposes of this short-term solvency test, we smoothed the  
19 assets, which means, you know, the market value of assets is  
20 going to fluctuate a lot every single year, so we draw a  
21 smooth line over time that recognizes those losses and gains,  
22 if you will, more slowly, so the fact that it's dropped over  
23 the five years shown here is really a recognition of the  
24 market losses in 2009 slowly being phased in. It allows the  
25 system to -- we're also during that time phasing in the gains

1 that are coming back in basically to smooth out the highs and  
2 lows of the market.

3 Q So as the market recovers, we can expect for the  
4 pension's funding level to also increase?

5 A Yes.

6 Q Okay. Each year the board of trustees publish their  
7 annual report that they send to its members showing the  
8 condition of the Retirement System. Is the information from  
9 the actuary report that's prepared by GRS & Company used to  
10 prepare the annual report for the General Retirement System  
11 members?

12 A We submit our report to the board in part so that they  
13 can base their information and their financials on it, yes.

14 Q Okay. Exhibit PS14702, board of trustees letter, page 2,  
15 from the annual report from Susan Glaser, chairperson of the  
16 board of trustee, years 2010 to 2011, fiscal year ending June  
17 30th, 2011, and Exhibit PS14701, fiscal year 2011 to 2012  
18 ending June 30th, 2012, states, "Your board of trustees is  
19 pleased to report that the Retirement System is in a sound  
20 actuary condition." Can you explain what is meant by "sound  
21 actuary condition"?

22 A I don't believe that's a term that we used in our report.  
23 The actuarial standards of practice say if we use that term,  
24 we have to define it, so I'm not sure what Susan Glaser had  
25 in mind, but our -- I would defer back to those prior pages

1 about the actuarial solvency and the solvency test combined  
2 with the city's -- at that point the city's ability to  
3 continue contributing. No matter where you are in the  
4 solvency test with your funded ratio, the important linkage  
5 is making sure the city -- the board adopts a contribution  
6 rate for the city, and the city then makes those  
7 contributions on a timely basis. And that's the objective  
8 that we ultimately test. We don't necessarily call it a  
9 sound actuarial condition. That's not a word that I would --

10 Q What words would you use?

11 A I would phrase it like I just did, that they are meeting  
12 the financial objectives as set forth in the board's funding  
13 policy.

14 Q So as long as the city makes its contributions, the fund  
15 is sound?

16 A In accordance with the board's funding policy, yes.

17 Q Thank you. On page 3 of the board of trustees' letter  
18 for fiscal year ending June 30th, 2011 and 2012, the board of  
19 trustees' chair states, "The General Retirement System is  
20 stable and secure and expects to meet all future retirement  
21 obligations to its members." Would you say that's a true  
22 statement?

23 A Again, back to the financing objective, which she refers  
24 to the funded status of 77 percent in that statement --

25 Q Um-hmm.

1 A -- combined with at that point in time the city's ability  
2 to continue funding the contributions, I would say the  
3 financial objectives of the system were met.

4 Q And able to meet the obligations to its members?

5 A On that basis, yes.

6 Q So that's a -- I mean because as of June 30th, 2011, the  
7 ratio of the System's assets to its liabilities to pay future  
8 benefits, like you stated, was 83 percent, and then in 2012  
9 it's 77 percent, and this is per the General Retirement  
10 System annual report. Now, this information is consistent  
11 with the actuary valuation report of June 30th, 2013, per  
12 Exhibit PS14700, page A-9, the column with the portion of  
13 accrued liabilities covered by asset information.

14 A In the 2013 report?

15 Q Well, that's the --

16 A By the time we got to the 2013 report, the city had -- my  
17 recollection is that the city had stopped making  
18 contributions, and I believe elsewhere in that report we had  
19 considerable language to that effect.

20 Q Right. So that would have a direct effect on the level  
21 of funding --

22 A Yes.

23 Q -- at this time?

24 THE COURT: One more minute, ma'am.

25 MS. JONES: Okay.

1 BY MS. MCCLELLAN:

2 Q In terms of the change of the return rate and adjusting  
3 it down to 6.75, what impact does that have on the pension as  
4 a whole?

5 A If you lower the assumption, that means you're assuming  
6 your assets are not going to get as -- grow as fast, so that  
7 actually increases the liability. It will ultimately lower  
8 the plan's funded ratio on that basis, and it will increase  
9 the city's required contribution.

10 Q Would it also have a -- I mean by that, can you give the  
11 appearance of the plan being underfunded? Would it increase  
12 the --

13 A Yes. By lowering the funded ratio, even if a  
14 hypothetical plan were a hundred percent funded at 7.9  
15 percent, if you lower the return to 6.75, it would no longer  
16 be a hundred percent. It would be lower than a hundred  
17 percent funded. Because the liability would increase, that  
18 ratio would drop.

19 Q Was that one of the things that did occur, you know,  
20 after Mr. Orr became the emergency manager?

21 A We have not performed a valuation using the 6.75 percent.

22 MS. MCCLELLAN: Okay. Thank you.

23 THE COURT: All right.

24 MS. JONES: Thank you. Thank you, sir.

25 THE COURT: Any questions for the witness? Yes.

1 Yes. Thank you.

2 CROSS-EXAMINATION

3 BY MS. O'GORMAN:

4 Q Good morning, Mr. Kausch. My name is Debbie O'Gorman. I  
5 represent one of the objectors. And you were one of the  
6 signing actuaries for the June 2013 valuations of the PFRS  
7 and GRS --

8 A That's correct.

9 Q -- correct?

10 A Yes.

11 Q And you're a member of actuarial societies; correct?

12 A Yes.

13 Q You're a member of the Society of Actuaries; correct?

14 A I'm a fellow of the Society of Actuaries. I'm member of  
15 the American Academy of Actuaries, and I could go on if you  
16 want me to. Got more.

17 Q Go ahead.

18 A I'm a fellow of the Conference of Consulting Actuaries  
19 and a member of the American Society of Pension Professionals  
20 and Actuaries.

21 Q And you have significant experience valuing public  
22 sector --

23 A Yes.

24 Q -- pension funds; correct? And the valuations you signed  
25 off on for the PFRS and GRS were done in accordance with

1 actuarial standards; correct?

2 A Absolutely.

3 Q And you worked with a team at Gabriel, Roeder, Smith?

4 A Yes.

5 Q And you would agree that that was a competent team that  
6 you worked with?

7 A Yes, absolutely.

8 Q And you have not been asked to revise the June 13th  
9 valuations in any respect, have you?

10 A No, we have not.

11 Q You have not received any complaints from the PFRS or GRS  
12 about the valuations, have you?

13 A No, we have not.

14 Q And as the signing actuary, it's one of your jobs to make  
15 sure that the assumptions used in the valuation reports are  
16 reasonable; correct?

17 A Correct.

18 Q And you have to get comfortable with assumptions such as  
19 the investment return assumption; correct?

20 A Correct.

21 Q And if the assumptions aren't reasonable, you would be  
22 obligated to disclose that in the valuation report; correct?

23 A The obligation is -- essentially that's correct. It's  
24 not a --

25 MR. EATON: Your Honor, the city objects to the line



1 of questioning. This was not brought up on the direct by the  
2 pro se participants, and the agreement was that Ms. Kermans  
3 would be the representative from Gabriel, Roeder, and we  
4 would submit counter-designations and designations to satisfy  
5 the testimony from Gabriel, Roeder, your Honor.

6 MS. O'GORMAN: And it's my understanding that that  
7 will be done, but this witness is here, and I really just  
8 have one more question for him.

9 THE COURT: All right. I'll permit one more  
10 question. Go ahead.

11 BY MS. O'GORMAN:

12 Q And there are no disclosures in the June 13th valuation  
13 regarding any concerns that Gabriel, Roeder had regarding the  
14 reasonableness of assumptions; correct?

15 A I believe we affirmed that the assumptions are  
16 reasonable.

17 MS. O'GORMAN: All right. Thank you.

18 THE COURT: All right. Any further questions for  
19 the witness?

20 MR. SHUMAKER: No.

21 THE COURT: All right. You may step down, sir.  
22 Thank you for coming today.

23 (Witness excused at 10:15 a.m.)

24 THE COURT: We're going to take our morning break at  
25 this time, and when we resume -- is Gloria Williams here?

1 No. Okay. If she does arrive, I'd like to ask her to  
2 question the balloting agent as she had requested, Chris, so  
3 if she does appear, we'll have to get the balloting agent on  
4 the telephone. Okay? All right. And we'll reconvene at  
5 10:35, please.

6 THE CLERK: All rise. Court is in recess.

7 (Recess at 10:16 a.m., until 10:35 a.m.)

8 THE CLERK: All rise. Court is in session. Please  
9 be seated. Recalling Case Number 13-53846, City of Detroit,  
10 Michigan.

11 THE COURT: Has Gloria Williams appeared? No.  
12 Okay. How about Irma Industrious and Dennis Taubitz? No.  
13 Okay. Next we would have then Walter Gary Knall, who will  
14 testify for himself for 15 minutes. Mr. Knall, are you here?  
15 Step forward, please. Over here, please, and please raise  
16 your right hand.

17 WALTER GARY KNALL, WITNESS, SWORN

18 THE COURT: Please sit down. And you may proceed  
19 when you're ready.

20 DIRECT TESTIMONY

21 MR. KNALL: My name is Walter Gary Knall. I'm a  
22 retired analytical chemist from the City of Detroit Health  
23 Department. I am reading from my exhibit, PS14704. One, I  
24 received a ballot to vote as a holder of a Class 11 pension  
25 claim. Two, the ballot stated that my pension was subject to

1 an annuity savings fund recoupment of \$42,421.64 under  
2 Alternative A and \$85,201.67 under Alternative B. That was  
3 taken from my ballot on the fourth page, which is Exhibit  
4 PS14705. My whole ballot did not mention anything about the  
5 6.75-percent interest. Three, there was no explanation as  
6 the basis for the claim that I owed either of these amounts,  
7 and certainly I engaged in no fraud or deceit with regards to  
8 my annuity, which I subscribed to with my own money and on  
9 terms that were presented to me by the pension board. I  
10 concur in the objections of Michael Karwoski, Document 5923,  
11 to the legality of this annuity recoupment. That's also in  
12 my Exhibit PS14706. Four, the ballot made no mention of the  
13 6.75-percent interest that I subsequently learned is being  
14 claimed as part of the monthly, quote, annuity repayment,  
15 unquote. Five, the ballot had no -- the ballot had no  
16 amortization schedule attached to it outlining what  
17 percentage of the monthly payment being deducted from my  
18 ballot was for interest and what percentage was being applied  
19 to the principal allegedly owed. Six, the ballot did not  
20 spell out whether the total estimated amount of the annuity  
21 savings plan recoupment under either Alternative A or  
22 Alternative B included the 6.75-percent interest rate or how  
23 it was calculated. Seven, I subsequently received the letter  
24 dated June 28th, 2014, informing me of the right pay off the  
25 annuity recoupment in a single lump sum. This is my Exhibit

1 PS14707. This letter only added to the confusion by not  
2 specifying the amount of the lump sum payment, especially in  
3 the light of the different payback amounts asserted under  
4 Alternative A and Alternative B. Eight, the inadequacy of  
5 the disclosure in the ballot provided and subsequently letter  
6 violates both consumer rights as enumerated in the Truth in  
7 Lending Act and under regulations formulated by the Consumer  
8 Finance Protection Bureau. Nine, the idea that I and my  
9 fellow retirees subject -- I mean retirees should be asked to  
10 vote on a plan requiring us to pay tens of thousands dollars  
11 back out of our meager pension on interest earned from our  
12 own contributions in a plan for which the city solicited our  
13 participation without knowing the precise terms under which  
14 the payback is being calculated is outrageous and illegal.  
15 Eleven, I will be asking the Court to strike the annuity  
16 recoupment plan or to -- or, in the alternative, to write  
17 into the plan of adjustment the city to be -- provide each  
18 retiree an accounting of how the amount was calculated and an  
19 interest-free method of recoupment. I also want to go to my  
20 exhibit of the PS14706, which is from the -- Michael  
21 Karwoski's report, starting at page 7 at the top. The plan  
22 also failed to -- failed the requirements of Sections 1129,  
23 parentheses A, parentheses 3, in that it failed to disclose  
24 that the proposed monthly recoupment amount presented on the  
25 ballot of each Class 11 retiree subject to annuity savings

1 fund recoupment includes the charging of interest at the rate  
2 of 6.75 percent. The failure to disclose the charging of  
3 interest and the rate of such interest violates both Michigan  
4 and federal lending and consumer protection laws. Because  
5 the plan proposed continuing to collect monthly recoupment  
6 payments through pension reduction even when -- even where a  
7 retiree outlives his or her actual life expectancy at such  
8 time the effective interest rate goes to a hundred percent  
9 because the full amount of, quote, excess interest, unquote,  
10 principal will have been collected, and the further  
11 collection is all interest. Even with the cash buyout  
12 option, the city still proposed to impose a 6.75-percent  
13 interest on any remaining balance where an annuity savings  
14 fund recoupment participant is not allowed to pay off the  
15 full amount if the \$30 million collective cap is exceeded  
16 and, of course, for those who do not choose or cannot afford  
17 the lump sum buyout.

18           The next paragraph, the plan does not provide equal  
19 treatment for each interest group in Class 11. Dropping down  
20 to the fourth line, the last part, that the violation of  
21 Section 1123, parentheses A, parentheses four, is at least as  
22 troublesome with respect of the two distinct retiree groups  
23 that are lumped together in Class 11, those subject to the  
24 annuity savings fund recoupment and those not subject to it,  
25 because the number of those subject to the annuity savings

1 fund is slightly less than half the total number in the class  
2 on a numerical vote basis, they could not defeat the plan  
3 treatment of Class 11 even if a hundred percent of them voted  
4 against it. Conversely, those not subject to the annuity  
5 savings fund recoupment numerically impose a yes -- quote, a  
6 yes, unquote, outcome on the annuity savings fund recoupment  
7 minority. Combining these two groups who are treated as  
8 significantly differently to the detriment of one group and  
9 to the advantage of the other is the same measure of \$230  
10 million collectively violates the Section 1123, parentheses  
11 A, parentheses four, requirement that the plan provide the  
12 same treatment for each claim or interest of the particular  
13 class unless the holder of a particular class -- a holder of  
14 a particular claim or interest agrees to less favorable  
15 treatment of such particular claim or interest. I call the  
16 Court's attention, a detailed analysis of this issue in John  
17 P. Quinn objections to the fourth amendment plan of  
18 adjustment, parentheses, document Number 5723, close  
19 parentheses, and incorporate his argument, particularly those  
20 in items two and three, pages 1 to 9, of his written -- of  
21 his writings here and reference.

22 I also want to go to page 5, the last two paragraphs  
23 of page 5 and the last two paragraphs of page 6. Any annuity  
24 recoupment is limited to a maximum of six years. If the city  
25 alleged basis for annuity savings fund recoupment is

1 unjust -- I mean if the -- I'll start over. If the city's  
2 alleged basis for annuity savings fund recoupment is unjust  
3 enrichment, the longest argument -- arguable applicable  
4 statute of limitation is six years. The plan proceeds a  
5 clawback period for annuity savings fund recoupment of ten  
6 years from July 1st of 2003 through June 30th, 2013, exceed  
7 the longest statute of limitation by four years. The federal  
8 court is required to follow the statute of limitation of the  
9 forum's state. Mackey versus Judy's Flood Incorporation  
10 (sic), 867 capital F dot 2nd 325, 328, parentheses, 6th  
11 capital CIR dot 1989, close parentheses. Under the theory of  
12 liability proposed by the city, if the annuity savings fund  
13 recoupment is permitted to remain in the plan at all, the  
14 recoupment period should be limited to no longer than six  
15 years. And on page 6, the last two paragraphs, the statute  
16 of limitation for enforcing a contract under Michigan law is  
17 six years. Capital MCL 600.5807(8). Therefore, even if  
18 annuity savings fund recoupment is allowed as part of the  
19 plan, the period for which the city may attempt to recoup  
20 overpayment to annuity saving fund accounts is six, not ten  
21 years. To do this, the city must prove that the annuity  
22 savings fund active and retiree participants, not the GRS  
23 trustees, breached the contract. Also under Michigan law,  
24 actions to cover money wrongfully paid for -- paid that are  
25 not based on breach of contract are governed by a six-year

1 statute of limitation in capital MCL 600.5813. Borman's  
2 Incorporated versus Lake State Development Company, 60  
3 Michigan App 175, 189; 230 capital N, capital W, N-D 363  
4 (1975). The city claim for unjust enrichment or restitution  
5 of just funds is subject to the six-year statute of  
6 limitation provided by MCL 600.5813, which applies whether  
7 the claim is legal or equitable, MCL 600.5815. I want to go  
8 back to --

9 THE COURT: Can you wrap up in one more minute,  
10 please, sir?

11 MR. KNALL: Yes, yes. I want to go back to my  
12 Exhibit PS57 -- PS14704, Number 11. I will be asking the  
13 Court to strike the annuity recoupment plan or, in the  
14 alternative, write into the plan of adjustment the city to  
15 be -- provide each retiree an accounting of how the amount  
16 was calculated and an interest-free method of recoupment.

17 Also, I want to say that because the two groups  
18 that's in Class 11 are being treated -- are not being treated  
19 the same is illegal. That's my conclusion.

20 THE COURT: Thank you very much, sir, and you may  
21 step down. I should ask are there any questions for the  
22 witness?

23 MR. SHUMAKER: No questions, your Honor.

24 THE COURT: Okay. You may step down, sir.

25 MR. KNALL: Okay.



1 (Witness excused at 10:53 a.m.)

2 THE COURT: And our next witness on my list is JoAnn  
3 Watson, who will testify for herself for 15 minutes. Raise  
4 your right hand.

5 JOANN WATSON, WITNESS, SWORN

6 THE COURT: All right. Please sit down, and you may  
7 proceed when you are ready.

8 MS. WATSON: Thank you, your Honor, and good  
9 morning.

10 THE COURT: Good morning.

11 DIRECT TESTIMONY

12 MS. WATSON: It's a privilege to speak to you today,  
13 and I'd like to concentrate on two points with respect to my  
14 objection to the plan of adjustment. One is centered on the  
15 role of the state having a conflict in this procedure, and  
16 the second point has to do with the democratic process being  
17 bypassed as part of this procedure. So going back to point  
18 one, the State of Michigan has played a role in declaring the  
19 city in a state of emergency, financial emergency, and the  
20 State of Michigan, quite frankly, has shepherded this process  
21 of bankruptcy. It interviewed and selected an attorney known  
22 for bankruptcy procedures as the emergency manager, but the  
23 state is a debtor to the city. As was put forth by the  
24 Michigan Municipal League in the spring of this year, just  
25 during the term of Governor Snyder the state has withheld

1 \$732 million in state revenue sharing that could have been  
2 provided to the City of Detroit just during the past four  
3 years along with millions and millions to other cities as  
4 well. It amounts to billions, and that was publicly  
5 announced in a verbal and a print format by the Michigan  
6 Municipal League.

7 In addition, in 1998 the governor of the State of  
8 Michigan and the mayor of the City of Detroit at that point,  
9 Governor Engler, Mayor Dennis W. Archer, they agreed to a  
10 nine-year plan that would have provided \$333.9 million per  
11 year for the city and a base level of revenue sharing in  
12 addition to the city giving up half a percentage rate of its  
13 income tax charged to nonresidents. That was a signed  
14 agreement via two legislative acts, but the city lived up to  
15 its agreement in not charging nonresidents the income tax.  
16 The state only paid for two of the nine years amounting to  
17 \$224 million never paid. The amount of income tax from  
18 nonresidents that the city lost during that period was 600  
19 million. So when you add up the 732 million, based on the  
20 Michigan Municipal League's report, during the Snyder era,  
21 add that to the 224 million that was defaulted in that  
22 agreement of 1998 and the 600 million we lost in the income  
23 tax not paid by the nonresidents, that's a billion and a half  
24 dollars that the state has played a role in the city not  
25 receiving, yet playing a role in declaring the city in

1 financial emergency and shepherding the bankruptcy process.  
2 I see that that is a conflict, your Honor.

3           The second point, the City of Detroit has been  
4 declared all over the world as having filed for bankruptcy,  
5 but the city is defined by the U.S. Justice Department as  
6 executive branch and the legislative branch. The executive  
7 branch nor the legislative branch ever saw -- we never saw  
8 the bankruptcy filing. We read about it in the paper. It  
9 never came before the body. Now, I know that the legislative  
10 body has approved the plan of adjustment and the grand  
11 bargain and many other things, many contracts, the \$180  
12 million contracts that have gone along with this  
13 restructuring and bankruptcy process. Many have been  
14 approved by the legislative body and by the executive branch  
15 but not the filing of the most historic bankruptcy in the  
16 history of the United States of America. None of that came  
17 before the legislative and executive branch, which bypassed  
18 the democratic process.

19           In addition, 2.3 million citizens in the State of  
20 Michigan repealed the emergency manager law in 2012. That  
21 democratic process was bypassed by the State of Michigan,  
22 which reenacted basically the same law that the citizens had  
23 said no to, so given that the State of Michigan has had a  
24 conflict in its role, on the one hand shepherding the  
25 bankruptcy process and on the other hand being a debtor to

1 the city and, secondly, the fact that the democratic process  
2 has been bypassed as part of these proceedings, those are  
3 among the two reasons that I stand in opposition to this plan  
4 of adjustment. Thank you, your Honor.

5 THE COURT: Well, let me ask you to articulate why  
6 you think that all happened.

7 MS. WATSON: Well, if, in fact, the legislative body  
8 and the executive branch had had an opportunity to deliberate  
9 on a recommendation for bankruptcy, for example, there might  
10 have been a decision made by one or more parties to litigate  
11 the much flawed and much talked about swap plan, which could  
12 have recouped hundreds of millions of dollars for the city  
13 coffers and negated any need for bankruptcy. That process  
14 was not allowed because the filing was done without the  
15 input, the advice and consent --

16 THE COURT: Well, in the case that litigation was  
17 filed and is before me now.

18 MS. WATSON: Given that that might have been an  
19 option sought --

20 THE COURT: Given what, ma'am?

21 MS. WATSON: -- prior to the filing.

22 THE COURT: I'm sorry.

23 MS. WATSON: If, in fact, the elected leadership of  
24 the city had decided to file a legal challenge to the --  
25 those parties who benefitted from that swap agreement, that

1 could have recouped hundreds of millions of dollars, which  
2 would not have necessitated a filing at all, sir.

3 THE COURT: Um-hmm. Okay. Thank you.

4 MS. WATSON: Thank you, your Honor.

5 (Witness excused at 10:59 a.m.)

6 THE COURT: Next we have Steven Wojtowicz, who will  
7 testify for himself for five minutes, and I apologize to you  
8 for I'm sure mispronouncing your name.

9 MR. WOJTOWICZ: Close enough.

10 THE COURT: Close enough. Well, thank you for that.  
11 Raise your right hand.

12 STEVEN WOJTOWICZ, WITNESS, SWORN

13 THE COURT: All right. You may sit there. Now, you  
14 presented to me last July, didn't you?

15 MR. WOJTOWICZ: Yes.

16 THE COURT: Okay.

17 MR. WOJTOWICZ: Yes, I did.

18 THE COURT: And I'm allowing you to testify here  
19 again but with the suggestion to you that you don't need to  
20 repeat anything you said back then.

21 MR. WOJTOWICZ: Yes, of course.

22 THE COURT: You may proceed.

23 MR. WOJTOWICZ: Okay. No problem.

24 DIRECT TESTIMONY

25 MR. WOJTOWICZ: I guess I'd like to briefly

1 address -- this is concerning the 3,200 ballots, the  
2 corrected ballots, when they -- because there was an error in  
3 the calculation of ASF's recoupment fiscal year. One of the  
4 things is that once they did that correction that they  
5 eliminated two years so that retired people -- it only  
6 affects now the people who retired on June 30th of 2005 or  
7 later, so it only affects eight of the ten years now of those  
8 people. It eliminated the first two years, so this means  
9 that recoupment now is being burdened by a fewer number of  
10 people.

11 Also, in the first ASF document, the original amount  
12 quoted -- this is for the -- the amount for the ten-year  
13 average -- this was done in the presentation at Cobo Hall --  
14 that the original average interest rate was 5.5 percent  
15 earned, but now with the change noted above for the -- you  
16 know, for the fiscal year, now that the interest rates has  
17 increased to 6.87 percent for that ten-year period,  
18 therefore, at the original negotiation the situation was much  
19 dire then than it is now. This represents an improvement of  
20 1.3 percent, which was earned by the Pension Bureau.

21 Now, the next thing, too, I'd like to mention is  
22 that they always bring up the bad year. That was 2009 where  
23 the pension lost 19.7 percent and gave out 7.9, but they  
24 always fail to mention like fiscal year 2004. The pension  
25 made 15.6 percent and only gave out 7.9 percent to the ASF.

1 They kept 7.6 percent for the -- in the Pension Bureau, so  
2 that was able to earn more interest. Another year was 2011.  
3 The pension made 20.2 percent. Again, they only gave out 7.9  
4 percent. They kept 12.3 percent in the GRS that was not  
5 given to ASF.

6 Now, my next comment, this is concerning -- this is  
7 concerning a docket. This is response to my docket  
8 originally from July 15th. This is Docket 7303. This is the  
9 response to my objection, and I'll just quote this. It says,  
10 "Moreover, once annuity savings fund excess amounts are  
11 annuitized using a 6.75-percent interest rate as previously  
12 disclosed in Class 11 ballots equaling an ASF distribution to  
13 the recipients, ASF recovery cap, having recovered from the  
14 ASF's distribution recipient no further ASF recoupment will  
15 be required from a specific ASF distribution recipient.  
16 Exact amounts have been disclosed on Class 11 ballots."  
17 Here's my response to that. The interest rate was never  
18 disclosed on the ballot, ballots 11. It's only on the ones  
19 that were reissued, and those were only put out to 3,200  
20 people of the 14,000 GRS retirees who were affected by the  
21 cut. Only after the vote the City of Detroit added the 6.75  
22 percent to the fifth amended bankruptcy document clarifying  
23 the interest rate.

24 The City of Detroit also indicates that the 6.75  
25 percent was disclosed at the GRS presentation meetings;

1     however, few people attended these meetings. It is also --

2             THE COURT: I need to interrupt you for one  
3     second --

4             MR. WOJTOWICZ: Sure.

5             THE COURT: -- and ask you to pull the microphone a  
6     little bit closer to you --

7             MR. WOJTOWICZ: Sure.

8             THE COURT: -- and speak right into it.

9             MR. WOJTOWICZ: Is that better?

10            THE COURT: Yes. Thank you.

11            MR. WOJTOWICZ: Let me go back here. However, few  
12     people attended these meetings. It was only indicated that  
13     these -- also indicated that these presentations were  
14     immediately posted to the GRS website, but no communication  
15     was made to anyone that this was -- to the retirees that this  
16     was being posted on the GRS website. Also, which I'm not  
17     going to repeat because they've already brought this up, that  
18     it goes on for your life. That's in two of the documents.  
19     It's in the presentation that it goes on for your lifetime.  
20     It also was in the ballot. So if it's possible, could we get  
21     some type of clarification put in the bankruptcy documents  
22     that specifies that it ends at the certain point, whatever  
23     your longevity is? At this point, it seems like everyone  
24     understands that it is going to -- it's going to go on until  
25     you die or until your wife dies, so if we could do some kind



1 of clarification there on that.

2 THE COURT: I thought perhaps that was in the latest  
3 plan, but I will get that clarified.

4 MR. WOJTOWICZ: I could not find it.

5 THE COURT: I will get that clarified --

6 MR. WOJTOWICZ: Yeah, because I --

7 THE COURT: -- in the proceeding.

8 MR. WOJTOWICZ: Yeah. I looked at the bulletin. I  
9 looked at -- a lot of times it'll just show you the  
10 corrections and the amendments. I did not see --

11 THE COURT: Right.

12 MR. WOJTOWICZ: -- any type of clarification.

13 THE COURT: Okay.

14 MR. WOJTOWICZ: And that needs to be done so that  
15 when we do get --

16 THE COURT: Of course.

17 MR. WOJTOWICZ: Yeah. Okay. Appreciate that. Then  
18 finally the thing that I submitted for this evidence, one of  
19 the -- one of the -- this is quoted in the bankruptcy  
20 documents. It says here -- this is concerning the ASF --  
21 "However, in no event shall the total amount deducted from an  
22 ASF distribution recipient's monthly pension check exceed the  
23 ASF recoupment cap." The cap is the 20 percent of your  
24 highest rate or the interest rate or 15.5 percent of your  
25 pension. Doesn't this mean that once they add the 6.75

1 percent, you're going above the recoupment cap in your  
2 monthly deductions? That's my question. Again, it says,  
3 "However, in no event."

4 THE COURT: Again, we'll clarify this, but my  
5 understanding is that the 6.75 percent is already included in  
6 that monthly amount.

7 MR. WOJTOWICZ: But the definition of the ASF  
8 recoupment cap is 20 percent of your highest amount during  
9 that ten-year period or the 15.5 or the interest --

10 THE COURT: Okay. I see your issue.

11 MR. WOJTOWICZ: So they've added one thing. Now  
12 they're calling it recover -- they're calling it a -- forgot  
13 what they -- a recovery cap, not a recoupment cap, but in the  
14 documents it says "ASF recoupment cap." Again, my question  
15 is -- and actually if you look at Exhibit -- the one I sent  
16 in -- yeah -- PS14001, I did send to Heather Lennox and  
17 Carole Neville if they could clarify this for me, and I never  
18 got a response back, but --

19 THE COURT: Okay.

20 MR. WOJTOWICZ: -- again, in my understanding of  
21 reading this, it says they can't take more than the  
22 recoupment cap, and that's my --

23 THE COURT: Okay.

24 MR. WOJTOWICZ: That's my question.

25 THE COURT: All right. I won't ask them to do that

1 today, but I will ask them to do that tomorrow.

2 MR. WOJTOWICZ: Okay. Appreciate it. Thank you  
3 very much.

4 THE COURT: Okay. Thank you, sir.

5 MR. WOJTOWICZ: Okay.

6 (Witness excused at 11:07 a.m.)

7 THE COURT: Okay. One more time, is Gloria Williams  
8 here or Irma Industrious? Mr. Karwoski or Mr. Quinn, is  
9 there any further presentation that either of you would like  
10 to make at this time?

11 MR. QUINN: Good morning, your Honor. John Quinn.  
12 Mr. Karwoski and I have no further evidence to present, but  
13 we do wish to participate in closing arguments at the  
14 appropriate time.

15 THE COURT: Okay. That'll be probably Tuesday and  
16 Wednesday of next week.

17 MR. QUINN: Thank you, your Honor.

18 THE COURT: That's how I foresee this. You're  
19 welcome. All right. Any other business before the Court  
20 this morning or today? All right. We'll be in recess until  
21 8:30 tomorrow morning. At that time, I expect the city will  
22 announce that it has settled with FGIC or, in the  
23 alternative, that FGIC will proceed with its proofs; right?

24 MR. SHUMAKER: Understood, your Honor.

25 THE COURT: All right.

1 THE CLERK: All rise. Court is adjourned.

2 (Proceedings concluded at 11:08 a.m.)

3 \* \* \*

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## EXHIBITS:                                              Marked                      Received

City Exhibit 777	30	30
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I certify that the foregoing is a correct transcript from the sound recording of the proceedings in the above-entitled matter.

/s/ Lois Garrett

October 21, 2014

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Lois Garrett